(26,342)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 365.

THE AMERICAN MANUFACTURING COMPANY,
PLAINTIFF IN ERROR,

vs.

THE CITY OF ST. LOUIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 20, 1918.

1 In the Supreme Court of Missouri.

In Banc.

No. 20,120.

THE AMERICAN MANUFACTURING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, Respondent.

Præcipe.

To Hon. Jacob D. Allen, Clerk of the Supreme Court of Missouri:

You are requested to copy and transmit to the Supreme Court of the United States, under your certificate, as return to the writ of error allowed herein, all of the record (in the cause above numbered and entitled) as follows:

1. This præcipe;
2. Appellant's printed abstract of the record (No. 20,120);
3. Appellant's assignment of errors (filed, Apr. 13, 1917);
4. Opinion and Judgment (of Dec. 1, 1917);
5. All other entries of record respecting said cause (No. 20,120);
6. Petition for writ of error;
7. Assignment of Errors (on writ of error) and
8. The bond (on writ of error)—

attaching thereto the writ of error and citation.

S. MAYNER WALLACE,
SHEPARD BARCLAY,
Of Counsel for Appellant,
the Plaintiff in Error.

2 UNITED STATES OF AMERICA,
State of Missouri, ss:

Be it remembered, that on the 12th day of April, 1917, there was filed in the office of the clerk of the Supreme Court of the State of Missouri "Appellant's Abstract of the Record" in a cause between The American Manufacturing Company, Appellant, and The City of St. Louis, Respondent, No. 20,120, which said abstract of the record is in the words and figures following, to-wit:

3 In the Supreme Court of Missouri, October Term, 1916.

No. 20,120.

THE AMERICAN MANUFACTURING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, Respondent.

Appeal from the Circuit Court, City of St. Louis.

Appellant's Abstract of the Record.

On the 16th day of January, 1913, the American Manufacturing Company filed in the Circuit Court of the City of St. Louis its petition in this cause, which said petition was in words and figures as follows (caption):

Petition.

In the Circuit Court, City of St. Louis, February Term, 1913, Div. —, No. —.

THE AMERICAN MANUFACTURING COMPANY, a Corporation, Plaintiff,

vs.

THE CITY OF ST. LOUIS, a Municipal Corporation, Defendant.

4 *First Count.*

The American Manufacturing Company, plaintiff herein, complains of the City of St. Louis, defendant, and says:

1. That plaintiff was at all times hereinafter stated a corporation duly organized and incorporated under the laws of the State of West Virginia, and licensed to do business in the State of Missouri, and had at said times in the City of St. Louis factories for the manufacture of bagging, and an office for the sale thereof; that defendant is and was at all times herein stated a municipal corporation of the State of Missouri, with a population of over 300,000 inhabitants, with power to levy for its support a tax annually upon property made taxable by the laws of the State within the limits of said city, and was authorized to license, regulate and tax the occupation of merchants and manufacturers in the defendant city.

2. That the ordinances of the City of St. Louis at the time herein stated, required, amongst other things, that an annual license tax should be imposed on and paid by every manufacturer in the City of St. Louis at the rate of twenty cents on each one hundred dollars of value on the greatest aggregate amount of raw materials on hand

in the City of St. Louis at any one time between the first Monday of March and the first Monday of June of each year except imported raw materials imported by the owner and in the original packages, and at the rate of one dollar per thousand on the aggregate amount of all sales made by him of goods in the City of St. Louis at
5 the time of their sale and delivery, during the year first next preceding said first Monday in June.

3. Plaintiff further states that defendant's license collector at the time herein stated was the officer at the times herein stated charged under the laws of the State of Missouri and the ordinances of the City of St. Louis with the duty of imposing and collecting manufacturers' license taxes and issuing manufacturers' licenses.

4. Plaintiff further states that the greatest aggregate amount of raw materials of plaintiff on hand in the City of St. Louis at any one time between the first Monday of March and the first Monday of June of the year 1909 included imported jute butts in the original packages, imported by plaintiff for the purpose of being manufactured by it into bagging, of the value of $180,794.22 and the aggregate amount of all sales made by plaintiff during the year first next preceding the first Monday of June of the year 1909 included sales to the amount of $1,558,185.33 made by plaintiff through its St. Louis office of goods outside of the City of St. Louis at the time of their sale and delivery.

5. Plaintiff further states that said collector demanded that plaintiff should pay as part of its license tax for said year ending on the first Monday of July, 1910, at the rate of twenty cents on each one hundred dollars of value of said imported goods, and at the rate of one dollar a thousand for each thousand dollars of said sales, and said collector refused to issue to plaintiff a manufacturer's license unless it paid him said taxes aggregating $1,919.76 and
6 threatened to have the plaintiff prosecuted daily in the police courts of the City of St. Louis and daily fined, for prosecuting in the City of St. Louis, without a manufacturer's license, the business of a manufacturer; that plaintiff was not authorized to continue its business in the City of St. Louis without a manufacturer's license from the City of St. Louis, and each day's continuance in business without such license was a separate offense under the laws of the State of Missouri and ordinances of the City of St. Louis, and said collector was empowered under such statutes and ordinances to institute prosecutions against plaintiff for each day it continued its business in the City of St. Louis without a manufacturer's license from said city, and it was impossible for plaintiff to continue in business as a manufacturer in the City of St. Louis, without such license, and plaintiff says that because of its liability to and the threat of such prosecutions and duress thereby created, plaintiff paid to said license collector under protest the said sum of $1,919.76, that is to say, the aggregate of said tax on said imported goods and on said sales, and thereupon received from said City of St. Louis a manufacturer's license for the year ending on the first Monday of July, 1910, and plaintiff was compelled to make such payment in order to continue in business as a manufacturer in the City of St. Louis.

6. Plaintiff further states that said collector had no authority to require the payment of any tax on said imported goods or said sales, and that the exaction of said sum of $1,919.76 or any part thereof, as a tax on said goods and said sales was an illegal exaction and said sum was unlawfully collected by said collector and paid into the treasury of the City of St. Louis.

7 7. Plaintiff further states that it paid the said sum of $— illegally demanded and exacted as aforesaid on the 9th day of July, 1909, and it prays judgment against defendant for said sum of $1,919.76 together with interest thereon from the said day of July, 1909, and costs.

Second Count.

1. That plaintiff was at all times hereinafter stated a corporation duly organized and incorporated under the laws of the State of West Virginia, and licensed to do business in the State of Missouri, and had at said time in the City of St. Louis factories for the manufacture of bagging, and an office for the sale thereof; that defendant is and was at all times herein stated a municipal corporation of the State of Missouri, with a population of over 300,000 inhabitants, with power to levy for its support a tax annually upon property made taxable by the laws of the state within the limits of said city and was authorized to license, regulate and tax the occupation of merchants and manufacturers in the defendant city.

2. That the ordinances of the City of St. Louis at the times herein stated required, amongst other things, that an annual license tax should be imposed on and paid by every manufacturer in the City of St. Louis at the rate of twenty cents on each one hundred dollars of value on the greatest aggregate amount of raw materials on hand at any one time between the first Monday of March and the first Monday of June of each year, at the rate of one dollar per thousand on the aggregate amount of all sales made by him during the year first next preceding said first Monday in June.

8 3. Plaintiff further states that defendant's license collector at the times herein stated was the officer at the times herein stated charged under the laws of the State of Missouri and the ordinances of the City of St. Louis with the duty of imposing and collecting manufacturers' license taxes and issuing manufacturers' licenses.

4. Plaintiff further states that the greatest aggregate amount of raw materials of plaintiff on hand at any one time between the first Monday of March and the first Monday of June of the year 1910 included imported jute butts in the original packages, imported by plaintiff for the purpose of being manufactured by it into bagging, of the value of $34,834.40 and the aggregate amount of all sales made by plaintiff during the year first next preceding the first Monday of June of the year 1910, included sales to the amount of $774,456.45, made by plaintiff through its St. Louis office of goods outside of the City of St. Louis at the time of their sale and delivery.

5. Plaintiff further states that said collector demanded that plaintiff should pay as part of its license tax for said year ending on the

first Monday of July, 1911, at the rate of twenty cents on each one hundred dollars of value of said imported goods and at the rate of one dollar a thousand for each thousand dollars of said sales, and said collector refused to issue to plaintiff a manufacturers' license unless it paid him said taxes aggregating $844.12 and threatened to have plaintiff prosecuted daily in the police courts of the City of St. Louis and daily fined for prosecuting in the City of St. Louis without a manufacturers' license the business of a manu-
9 facturer; that plaintiff was not authorized to continue its business in the City of St. Louis without a manufacturer's license from the City of St. Louis, and each day's continuance in business without such license was a separate offense under the laws of the State of Missouri and ordinances of the City of St. Louis and said collector was empowered under such statute and ordinances to institute prosecutions against plaintiff for each day it continued its business in the City of St. Louis without a manufacturer's license from said city, and it was impossible for plaintiff to continue in business as a manufacturer in the City of St. Louis without such license, and plaintiff says that because of its liability to and the threat of such prosecutions and the duress thereby created, plaintiff paid to said license collector under protest said sum of $844.12, that is to say, the aggregate of said tax on said imported goods and on said sales, and thereupon received from said City of St. Louis a manufacturer's license for the year ending on the first Monday of July, 1911, and plaintiff was compelled to make such payment in order to continue in business as a manufacturer in the City of St. Louis.

6. Plaintiff further states that said collector had no authority to require the payment of any tax on said imported goods or said sales, and that the exaction of said sum of $844.12, or any part thereof, as a tax on said goods and said sales, was an illegal exaction and said sum was unlawfully collected by said collector and paid into the treasury of the City of St. Louis.

7. Plaintiff further states that it paid the said sum of $— illegally demanded and exacted as aforesaid, on the 29th day of July, 1910, and it prays judgment against defendant for said sum of
10 $844.12, together with interest thereon from the said 29th day of July, 1910, and costs.

SULLIVAN & WALLACE,
Attorneys for Plaintiff.

A true copy.
Attest:
CHAS. R. GRAVES, *Clerk.*

Thereafter, on the 12th day of June, 1913, defendant, The City of St. Louis, filed in court its answer, in words and figures as follows (caption omitted):

Answer.

Now comes the defendant in the above-entitled cause and, for answer to the plaintiff's petition, denies each and every allegation thereof.

Wherefore, having fully answered, defendant prays to be hence discharged.

Thereafter, on October 20th, 1913, and during the October Term of court, 1913, said cause was submitted to the Court without a jury, and a judgment was entered by the Court as follows:

First Count.—Judgment for plaintiff and against defendant for $1,919.76, with interest at 6 per cent from July 9th, 1909, amounting to $493.03, making a total judgment for $2,412.79.

Second Count.—Judgment in favor of plaintiff and against defendant for $844.12, with interest at 6 per cent from July 29th, 1910, amounting to $163.33, aggregating upon said second count a judgment of $1,007.45.

11 And thereafter, on October 23rd, 1913, and during said October Term of said court, and within four days after the date of said judgment, defendant filed in court its motion for a new trial, which said motion is set out in full in the bill of exceptions, infra.

And thereafter, on November 10th, 1913, and during said October Term of said court, said motion of defendant for a new trial was by the Court overruled.

And thereafter, on November 20th, 1913, and during said October Term of said court, the defendant filed in court its affidavit for appeal and its appeal bond, which was duly approved in open court, and the Court allowed the defendant an appeal to the Supreme Court of the State of Missouri.

And thereafter, on April 7th, 1914, the defendant filed in court its bill of exceptions, which was duly allowed, signed, sealed and ordered filed by the Court, which said bill of exceptions is in words and figures as follows:

12 *Defendant's Bill of Exceptions.*

Be it remembered, that, heretofore, to-wit, on the 20th day of October, 1913, and during the October Term, 1913, of said court, the above entitled cause came on for hearing before the Honorable Wilson A. Taylor, Judge of the Circuit Court of the City of St. Louis, Missouri, in Division No. 7 thereof, and the following proceedings were had, to-wit:

Appearances: Mr. Wallace appeared for plaintiff; Mr. Young appeared for defendant.

Mr. Young: I want to file answers in the nature of general denials in these two cases.

The Court: All right.

FRANK WELTIN, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

(Questions by Mr. Wallace, counsel for plaintiff:)

Q. Please state your name?
A. Frank Weltin.
Q. What if any connection did you have with the American Manufacturing Company during the years 1909, 1910 and 1911?
A. Bookkeeper and cashier.
Q. The same connection during the year 1908?
A. For the past six years in that position.

Mr. Wallace: I offer in evidence at this point, license from the State of Missouri to the plaintiff, to do business in this state.

(Said license is in words and figures as follows:)

13 "No. 125.

The State of Missouri.

Certificate.

Whereas, The American Manufacturing Company, incorporated under the laws of the State of West Virginia, has filed in the office of the secretary of state duly authenticated evidence of its incorporation, as provided by law, and has, in all respects, complied with the requirements of law governing foreign private corporations.

Now, therefore, I, Alexander A. Lesueur, secretary of state of the State of Missouri, in virtue and by authority of law, do hereby certify that said The American Manufacturing Company is from the date hereof duly authorized to do business in the State of Missouri for a term ending January 26, 1939, and is entitled to all the rights and privileges granted to foreign corporations under the laws of this state, and that the amount of the capital stock of said corporation is two million seven hundred and ninety-four thousand and five hundred dollars, and the amount of said capital stock represented in the State of Missouri is four hundred and fifty thousand dollars.

In Testimony Whereof, I hereunto set my hand and affix the great seal of the State of Missouri. Done at the City of Jefferson, this twentieth day of August, A. D. eighteen hundred and ninety-one.

[SEAL.]

A. A. LESUEUR,
Secretary of State."

Q. Has The American Manufacturing Company, or had it at the time referred to, an office in the City of St. Louis, any factories?
A. It had an office in the Rialto building at Fourth and Olive streets, and three factories in St. Louis.

14 Q. What business was it in?
A. The manufacturing of bagging and baling cotton.

Mr. Wallace: At this point, we also desire to offer the Revised Code of St. Louis, Werner, 1907, Articles 10 and 11 of Chapter 31.

(See Appendix to this Bill of Exceptions.)

Mr. Wallace: We also offer a notice to produce certain papers and documents, and acceptance of service.

(Which said notice to produce certain papers and documents and acceptance of service is as follows:)

In the Circuit Court, City of St. Louis, Div. No. 7.

No. 82977.

"THE AMERICAN MANUFACTURING COMPANY, a Corporation,
Plaintiff,
vs.
THE CITY OF ST. LOUIS, Defendant.

Notice to Produce Papers and Documents.

To the Above-named Defendant, the City of St. Louis, or its Attorney, Truman P. Young, Esq.:

You are hereby notified and requested to produce at the trial of the above mentioned case, in Division No. 7, of the Circuit Court, City of St. Louis, on Monday, June 9, 1913, the following papers and documents, to-wit:

The tax returns made by plaintiff, as a manufacturer, to Louis Alt, license collector, in 1909, upon which plaintiff's license to do business for the year ending on the first Monday of July, 1910, was issued;

A letter written by said plaintiff to 'Mr. Louis Alt, license collector, St. Louis, Mo.,' dated July 8, 1909;

A letter written by said plaintiff to 'Mr. Louis Alt, license collector, St. Louis, Mo.' dated July 8, 1909;

15 The tax returns made by said plaintiff, as a manufacturer, to said license collector, in 1910, upon which said plaintiff's license to do business for the year ending on the first Monday of July, 1911, was issued;

A letter written by said plaintiff to 'Louis Alt, Esq., license collector, City Hall, City,' dated 'St. Louis, June 23, 1910';

A letter written by said plaintiff to 'Hon. Louis Alt, license commissioner, City of St. Louis,' dated 'St. Louis, July 21, 1910,' and

A letter written by said plaintiff to 'Hon. Louis Alt, license commissioner, City of St. Louis,' dated July 26, 1910.

If said papers and documents are not produced at said time and place, the above named plaintiff will offer secondary or other evidence of the contents of same.

SULLIVAN & WALLACE,
Attorneys for Plaintiff.

Service acknowledged June 6, 1913, T. P. Young."

Q. I will ask you if you have a copy of the returns made by The American Manufacturing Company for its taxes to the license collector for the year ending on the first Monday in July, 1910, showing the amount of raw material on hand between the first Monday of March and the first Monday of June of the year 1909, and also the amount of sales made by the plaintiff during that time?

A. Yes, sir; the value of the raw material imported was one hundred and eighty thousand dollars.

Q. Give the exact figures?

A. $180,794.22.

Q. Was that imported material in the original packages?

A. Yes, sir.

Q. Awaiting what?

A. Manufacture.

Q. Where did it come from?

16 A. Well, this came from India.

Q. How many—say how much in sales during that time?

A. The sales? What do you want, the total sales?

Q. The sales made by The American Manufacturing Company on goods outside of the State of Missouri, at the time of their sale and delivery?

A. $1,558,185.33.

Q. Where were those goods at the time of their sale?

A. Some of it was at Galveston, New Orleans, Vicksburg, Memphis, Pine Bluff, and scattered all over the country.

Q. Well in the return made to the license collector——

Mr. Young (interrupting): What were those items there, of sales outside the state?

A. $1,558,185.33.

Q. In making out that return to the license collector, where did you get your information as to the amount of imported material on hand in this city awaiting manufacture?

A. Why, I would call on the people at the mills who had charge of the stock down there to furnish me with the amount of raw material that they had on hand. One of the mills was a southern mill on Ninth and Barry.

Q. They were all here in the city?

A. Yes, sir.

Q. And you made out the return to the license collector from the figures furnished by them?

A. Yes, sir; I would consolidate those figures.

Q. Are they here today in court?

A. Yes, sir; they are.

Q. What means did you have of knowing how much goods outside of the State of Missouri, at the time of their sale and delivery, was sold by the plaintiff during that time?

A. Well, I would receive from the different consignment points invoices, duplicate invoices, of deliveries made out of those

17 points, and would take and charge up the customers with the invoices; and at the end of the month I would send them a

statement, and they would pay us the amount of our bills, and we never have had any dispute of anything not being delivered, and we also run a stock record.

Q. From whom would the orders for this property come?

A. For delivery?

Q. Yes, sir.

A. Well, take at Galveston, for instance; all of that was sold direct by the agent there.

Q. Was all of these orders for this amount of goods sent to you by agents over the country?

A. Well, at Galveston, he received the orders direct to make the shipments.

Q. But he sent you a copy of the bill that he had rendered to the customer?

A. Yes, sir.

Q. Why did you include these two items in the amount of imported raw material and the amount of sales outside of the state, in your tax return to the license collector for that year?

A. Well, we have letters here from Mr. Alt stating that if we didn't pay on those, we would be subject to fine and prosecution.

Q. Did you first make returns without including those items?

A. Well, I would make up the returns, including the raw materials, the imported raw materials and the sales outside the city, and I offered to make payment and Mr. Alt refused the check, and sent us back a letter and in a few days a letter came along demanding payment for the amount that they thought we should pay.

Q. Was it because of those statements made to you concerning prosecution and so forth by the collector that this amount was listed and paid on?

A. It was because we understood we were subject to a fine of
18 twenty-five dollars to one hundred dollars a day and that each day would constitute a separate offense.

Q. There is a check here dated June 29th, 1909, payable to the order of Louis Alt, license collector, for $3,068.70?

A. Yes, sir.

Q. Was that check first offered in payment?

A. Yes, sir.

Mr. Wallace: We offer that check in evidence.

(Said check is as follows):

"Voucher No. ...., Check No. 18030.

The State National Bank of St. Louis.

190.... ST. LOUIS, June 29, 1909.

Pay to the order of Louis Alt, License Collector, $3068.70 Three Thousand Sixty Eight & 70-100 Dollars. In full for Mfg. License City and State 7-1-09 to 7-1-10. A. P. W. Tax & W. L. $3068.70.

THE AMERICAN MANUFACTURING COMPANY,
220 N. 4th St., St. Louis.

By Frank Weltin, Cashier, and L. F. Jones, Director.

This check is not payable unless signed and countersigned."

(At the left-hand side of said check appears the following):

"Approved for payment, F. W."

(Written across the face of said check in ink appears the following):

"This check offered in payment of license as per our returns and refused by Louis Alt, Collector."

Q. Here is a copy of a letter dated June 29th, 1909, addressed to Mr. Alt, license collector, St. Louis, Missouri, and signed by The American Manufacturing Company; is this the copy of a letter that was actually sent to Mr. Ault?

10 A. It is.

Q. Where did this copy come from?

A. Why, I had charge of all the papers and it came out of the files I had; that is, a personal file I had in the security box in the office.

Q. Were the letters sent or taken to Mr. Alt?

A. I took them up there personally and kept the carbon copies.

Mr. Wallace: I will offer this letter in evidence.

(Said letter is as follows):

"ST. LOUIS, June 29, 1909.

Mr. Louis Alt, License Collector, St. Louis, Mo.

DEAR SIR: We enclose herewith our check for $3,068.70, in payment of our city and state license tax as manufacturers, on the following merchandise and sales, as per our return herewith made, and which we claim to be the amounts on which we are to pay taxes, namely:

Property.	Values.	Taxes.
Tools, machinery and appliances	$60,000.00	$582.00
Merchandise and finished products	250,244.55	2,427.38
Sales made from St. Louis office and shipped from stock in said city to points in the State of Missouri	59,313.74	59.32
		$3,068.70

The amount tendered herewith is based on the tax on the sales above mentioned of $1.00 per thousand, and on the value of
20 the property above stated at the rate of 97 cents per hundred dollars. The return of this company made to your office includes jute butts in original packages imported by this company for the purpose of being manufactured by it into bagging, and in its warehouses in this city, between the first Monday of March and the first Monday of June, 1909. This return also includes the interstate commerce sales of this company made through its St. Louis office.

We are informed by our attorney that we can not be lawfully taxed on such imported goods, nor upon our interstate commerce sales. We are also informed by him that Judge Grimm decided in the case of this company vs. the city, now pending in the Supreme Court, that the city could not tax sales though made through the St. Louis office, if filled from stock made in New York; and therefore, though the value of such goods and the amount of such sales are set forth in our return, we decline to pay taxes on such goods and on such sales, and we tender you the above stated amount of $3,068.70 as the amount lawfully taxable against this company on its city and state license and ask you to issue such license to us.

We beg to remain,

Very truly yours,

AMERICAN MANUFACTURING COMPANY,

By —— ——,

Treasurer."

Mr. Wallace: In response to that letter, I now offer in evidence in response to that a letter from Mr. Louis Alt to The American Manufacturing Company, dated June 29, 1909.

(Said letter is as follows):

21 "City of St. Louis, Missouri.

(The Common Seal of the City of St. Louis.)

Louis Alt, License Collector.

Edw. A. Hoberg, Chief Deputy.

June 29th, 1909.

American Manufacturing Company, Saint Louis, Missouri.

GENTLEMEN: Your letter of even date containing check amounting to $3,068.70, which you tendered in payment of your 1909 manufacturers' license, received.

I wish to say that I refuse to accept same as payment for said license for the same reasons as set forth in my letter to you of September 18th, 1908, in regard to your license for that year.

Yours truly,

LOUIS ALT,
License Collector."

Q. I hand you a notice, dated July 8th, 1909, addressed to The American Manufacturing Company and signed by Louis Alt, license collector, stating that your taxes amount to $6,790.07—was that notice received from the license collector?

A. Yes, sir; that was received through the mail.

Mr. Wallace: I offer that notice in evidence.

(Said notice is as follows):

"For your convenience please mail check and license will be returned by mail.

Make all checks payable to the order of Louis Alt, license collector. District No. —.

22 Office of License Collector,

Room 102, City Hall.

ST. LOUIS, Jul- 8, 1909.

City	$3,008.10
State	$3,781.97
Total	$6,790.07

American Mfg. Co., Rialto Bldg.

Your city and state license for doing business as a manufacturer having expired, you are hereby notified to call at once and pay the

same to me at my office, as required by law, and your license will be issued.

Respectfully,

LOUIS ALT,
License Collector.

Return this notice.

Your license expires July 1st."

Mr. Wallace: I offer in evidence a similar copy of a letter dated July 8th, 1909, addressed to Mr. Louis Alt, license collector, and signed by The American Manufacturing Company.

(Said letter is as follows):

"July 8, 1909.

Mr. Louis Alt, License Collector, St. Louis, Mo.

DEAR SIR: We have just received your demand dated July 8th, for the payment by this company of $6,790.07, as its manufacturer's license tax for this year.

We understand from this demand and also from the conversation of Mr. Lockwood, our attorney, with you over the phone this
23 morning, that you and the Board of Revision have refused to accept as payment of our license tax for this year the $3,068.70 tendered you with our letter of June 29th, last, and that you demand payment by us of $1.00 per thousand on all the sales scheduled in our return made at the time of the delivery of our letter of June 29th, and also a tax at the rate of 97 cents on the $100 on the value of the imported goods scheduled in that return.

As stated in our letter of June 29th last, we deem the exaction of a tax on our interstate commerce sales and on the imported goods in their original packages, set forth in our return, to be illegal and contrary to the constitution of the United States; but we have been informed and understand the law to be that if we continue to do business without a license that this company is subject to daily fines and its officers to daily arrest, and that you will feel that it is your duty to invoke these penalties of law against us if we continue to do business without payment of the amount demanded by you in payment of our manufacturer's license for this year. Such was the position taken by you last year with respect to our license tax, and we assume that you will proceed against us according to the law unless we now accede to your demand for the payment of $6,790.07.

With this understanding of the law and of your position with respect to its enforcement, we enclose herewith our check for $6,790.07 which you have demanded in payment of our manufacturer's license tax for this year. We must inform you, however, that this payment is made under protest and enforced by duress of the aforesaid threatened legal proceedings unless we comply with your demand.
24 We also would state to you frankly that we expect to institute suit against the City of St. Louis for the recovery of the difference between the amount which we have heretofore tendered ($3,068.70) and the amount herewith remitted ($6,790.08). We

beg to assure you, however, of our appreciation of your uniform courtesy in dealing with us in connection with this matter.

Kindly send us our manufacturer's license and oblige,

Yours truly,

THE AMERICAN MAN'F'G COMPANY,

By —— ——,

Treasurer."

Q. Was that letter likewise sent or delivered to Mr. Alt?
A. I took that up to him in person.

Mr. Wallace: I now offer in evidence a check dated July the eighth, 1909, for $6,790.07, payable to Mr. Louis Alt, license collector. (Said check is as follows:)

"Voucher No. —, Check No. 18071.

The State National Bank of St. Louis.

ST. LOUIS, Jul- 8, 1909 190–.

Pay to the order of Louis Alt, license collector, $6,790.07, Sixty Seven Hundred ninety & 07/100 Dollars.

In full for 1909 License.

A. P. W. T. & W. L. 6790.07.

THE AMERICAN MANUFACTURING COMPANY,
220 *N. 4th St., St. Louis,*
By FRANK WELTIN, *Cashier, and*
L. F. JONES, *Director.*

This check is not payable unless signed and countersigned."

25 On the side of said check appears:

"Approved for Payment F. W."

Q. Was that the check that was paid?
A. That is the check.
Q. In order to get your license?
A. Yes, sir.

Mr. Wallace: I now offer in evidence a license which is said to have expired on July 1st, 1910, authorizing The American Manufacturing Company to do business as therein stated for the year ending on July 1st, 1910. (Said license is as follows:)

"Expires July 1, 1910.

Manufacturers' State and City License.

STATE OF MISSOURI,
City of St. Louis:

To all who shall see these presents, Greeting:

Know Ye, that American Manufacturing Co. having paid to Louis Alt, License Collector of the City of St. Louis, the sum of Sixty-seven Hundred Ninety & 07/100 Dollars, being the tax and license upon it as manufacturer.

Therefore, the said American Manufacturing Co. is hereby authorized to manufacture the following articles, viz., bagging, except as otherwise provided by ordinance, at any one place of business within the city for the year ending on the first Monday of July, 1910, and to sell and dispose of such articles so manufactured at the same place, or any other one place in the city.

26	City tax	$982.10	
	City license	2,026.00	
			$3,008.10
State tax		$736.65	
State Int. tax		98.22	
School tax		2,946.60	
Register's fee		.50	
			3,781.97
Total			$6,790.07

In Testimony Whereof, I, B. J. Taussig, Comptroller of the City of St. Louis, have hereunto set my hand this 9th day of July, 1909.

B. J. TAUSSIG,
Comptroller.

Delivered this 9th day of July, 1909.

LOUIS ALT,
License Collector.

M. R. H. WITTER, *Register,*
By HOBERG, *Deputy.*

No. 399."

On the sides of said license appears:

"Bring this license when you call to renew. This license is not transferable."

On the back of said license appears:

"Paid Jul- 9 1909."

Q. Referring to the year 1910, for a license ending on the first Monday of July, 1911, have you a copy of the return that you made to the license collector for your license expiring at that time in 1911?

A. These are the papers that I fixed up, yes, sir.

Q. How much, if any, imported material in the original packages did The American Manufacturing Company have on hand in this city, between the first Monday in March and the first Monday of June, 1910?

A. $34,834.40.

27 Q. Where did that material come from?

A. From India.

Q. For what purpose was it being held?

A. Well, it was imported to use in the manufacturing of bagging for baling cotton.

Q. How much sales of goods outside the City of St. Louis and State of Missouri, at the time of their sale and delivery, did The American Manufacturing Company make during the year next preceding the first Monday of June, 1910?

A. $774,456.41.

Q. Why were those two items of imported material and of sales of goods included in the return made to the license collector?

A. Well, it was made because he would not accept the returns that we made with the other amount; we had to include it in order to get our license.

Q. Where did you get your information from concerning those two items of imported material and of sales?

A. On the imported material, I would get it here in St. Louis from the men here in St. Louis that had charge of the stock records; and on the sales, I would get that from the duplicate invoices that I received by our agents at various points.

Q. In the same manner as the other sales that you have testified about?

A. Yes, sir.

Q. In order to get the license for the year ending on the first Monday of July, 1911, were you required by the license collector to pay the taxes upon those two items of goods?

A. We were.

Q. Had the license collector threatened to prosecute you if the taxes were not paid on those items?

A. He did.

28 Q. Was it because of those threats and of your liability of prosecution that you acceded to that demand and made payment on same?

A. Yes, sir.

Mr. Wallace: I offer now in evidence a copy of the return made for that year. (Said copy of return is as follows:)

Statement of Tax Return of The American Manufacturing Company.

1.

Value of largest amount of all goods, wares, merchandise, tools, machinery, *nc.*, in its possession or control between first Monday of March and first Monday of June, 1910.

	Value.	Tax.
1. Raw material consisting of Imported Jute butts and Gunny imported by Amer. Mfg. Co. for the purpose of being manufactured by it into Bagging and in its Warehouses in original packages	$34,834.40	$337.89
2. Finished products	340,848.90	3,306.23
3. Tools, Mach'y, &c	60,000.00	582.00
	$435,683.30	$4,226.12

2.

1. Aggregate Amount of sales for year ending June 1, 1910	$11,470.48	$11.47
Total		$4,237.59

THE AMERICAN MANUFACTURING CO.,
By —— ——,
Treasurer."

Mr. Wallace: I now offer in evidence a letter dated St.
29 Louis June 23, 1910, addressed to Louis Alt, Esq., signed by the The American Manufacturing Company. (Said letter is as follows:)

"ST. LOUIS, June 23, 1910.

Louis Alt, Esq., License Collector, City Hall, City.

DEAR SIR: We enclose, herewith, our check for $4,237.59 in payment of our City and State license tax as manufacturers on the following merchandise and sales as per our return, namely:

1.

Property.	Value.	Tax.
1. Imported goods in original packages	$34,834.40	$337.89
2. Finished products	340,848.90	3,306.23
3. Tools, machinery, &c	60,000.00	582.00
	$435,683.30	$4,226.12

II.

1. Aggregate amount of sales for year ending June 1, 1910	11,470.48	11.47
		$4,237.59

The tax of $337.89 (included in the check herewith for $4,237.59), being the tax on imported goods in original packages, is paid under protest and only because as appears from our correspondence with you on this subject in 1908 & 9, you will not issue a license to us unless such tax is paid, and because if we attempt to do business without a license we will be subject to daily arrest and prosecution.

Acting under the compulsion of this condition we pay the
30 tax on the imported goods referred to, but protest that it is unconstitutional and illegal to exact it, and we expect to sue the city and recover the amount thereof in due course of time, that is, after the case which this compa-y has against the city for a like and other taxes, and which is now pending in the Supreme Court of this State is decided. This formal protest and notice to you is for the purpose of preserving our legal rights under the facts stated.

In explanation of the small aggregate amount of our sales for the year ending June 1, 1910, we would say that during that year the principal selling office of this company has not been in the City of St. Louis, as had been the case in prior years.

Very truly yours,

THE AMERICAN MANUFACTURING CO.,

By —— ——,

Treasurer."

Mr. Wallace: I now offer in evidence a letter dated July 21st, 1910, addressed to Hon. Louis Alt, license collector, signed The American Manufacturing Company.

(Said letter is as follows):

"July 21, 1910.

Hon. Louis Alt, License Commissioner, City of St. Louis.

DEAR SIR: Having been informed through your attorney that you were not satisfied with the return of sales for the year ending June 31, 1910, made by us in our application for manufacturer's license on June 23, we submit herewith a supplementary
31 statement, but state in explanation thereof, that our former report was made under advice of counsel and included all the sales that we were advised were subject to taxation in the City of St. Louis.

Since our report for year ending June 30, 1909, was made, we have made a very material change in our method of doing business with our home office in New York, so that substantially all our sales, though negotiated here, of merchandise stored in this and other cities, are confirmed by and are not effective until they are confirmed by the home office in New York. We are advised by our counsel that sales so made are not taxable in the City of St. Louis.

Apart from this we are also advised that the sales of property to purchasers in other states are transactions in interstate commerce and are, therefore, not subject to taxation directly or indirectly by the City of St. Louis. Furthermore, as to that part of such sales as were of merchandise located in other states at the time of sale, it was ex-

pressly decided by Judge Grimm in the suit growing out of our return for the year ending June 30, 1908, in the St. Louis Circuit Court, case No. 56,671, involving precisely the same question as herein involved and therefore, constituting a res adjudicata between this company and the city, sales of such property so located are not taxable as sales by the City of St. Louis.

We make these statements in explanation of this supplementary return and we make the returns solely because of your demands therefor and to avoid unnecessary embarrassment of our business, and we notify you that any payment made under the addi-
32 tional sales shown in the supplementary statement will be made under protest.

We should add to the foregoing that, irrespective of these legal questions involved, the discrepancy between the amount of our sales for this year and the preceding year is owing to the short cotton crop of the latter year, which very sensibly affected the sales of bagging for cotton, which is the business of our company.

Appreciating your personal courtesy, we remain,

Very respectfully,

THE AMERICAN MANUFACTURING COMPANY,

By —— ——,

Treasurer."

Mr. Wallace: I now offer in evidence a letter received from Mr. Louis Alt, license collector, by The American Manufacturing Company, and dated July 23, 1910.

(Said letter is as follows:)

"ST. LOUIS, July 23, 1910.

The American Manufacturing Company, Rialto Bldg., City.

GENTLEMEN: I acknowledge receipt of your letter of July 21, accompanying your application and supplementary statement for Manufacturers' License.

The enclosed card informs you of the amount, viz, $5,408.79, which will have to be paid by you for your license.

I note your dissatisfaction with the construction placed by me upon the existing laws and ordinances, and that any payment made by you upon portions of the stock and sales as listed will be made under protest. I am unable to alter the decision which I have made upon these questions, and it becomes my duty to inform you
33 that full payment of the above amount will be exacted, and if not made you will subject yourself to the penalties prescribed by the law for those doing business in the city without having obtained a license therefor.

Yours truly,

LOUIS ALT,

License Collector."

Mr. Wallace: I now desire to offer in evidence a copy of a letter

addressed to the Hon. Louis Alt by The American Manufacturing Company, dated July 26, 1910.

(Said letter is as follows:)

"July 26, 1910.

Hon. Louis Alt, License Collector, City of St. Louis.

DEAR SIR: Your letter of July 23 enclosing card and demanding the payment of $5,408.79 as a tax on our sales and our manufacturer's stock as a condition for a renewal of our city and State license as a manufacturer for the ensuing year, is received.

You notify us that unless we pay this sum thus demanded, you will refuse to issue us any license and will proceed against us for continuing business without a license. We have already advised you in our letters of June 23 and July 21 of our position and claim as to the amount lawfully exacted from us, but as we cannot interrupt our business without irreparable loss, we are compelled to accede to your demand, and under the compulsion thereof, we enclose herewith our check for $5,408.79.

We make this payment under protest and on the grounds heretofore specifically stated as follows:

34 First: As to the amount of $337.89 included in this payment, that is in the check herein of $5,408.79, the said amount of $337.89 being a tax on goods imported from foreign countries in their original packages, and therefore not subject to a tax by any city or state authority.

Second: We also pay under protest the tax on all the sales set forth in our supplemental statement, to-wit: on sales aggregating $1,170,253.57, as such sales were made subject to the approval of and thus not effective until approved in the City of New York, and being thus in effect contracts under the law of New York, and therefore not subject to taxation as sales in the City of St. Louis.

Third: We also pay under protest as to all the sales aggregating $1,132,526.87, included in said total payment, as they are sales made to purchasers in other states, involving shipments to other states, and therefore transactions in Interstate Commerce and not subject to the City of St. Louis.

Fourth: We also pay under protest, irrespective of the foregoing grounds of protest of sales aggregating $774,456.45, that is, the sum of $774.45 included in this payment of $5,408.79, for the reason that said sales were of merchandise located in other States and not in the State of Missouri and were delivered from said other States to the purchasers thereof, and that said goods and the sales thereof were wholly without the taxing power of the City of St. Louis, and furthermore, that the right of the City of St. Louis to tax such sales of property so located has been expressly adjudged by the Circuit Court of the City of St. Louis in case No. 56,671, adversely to the City of St. Louis, and therefore constituting res adjudicata
35 between this company and the City of St. Louis; that property so located is not subject to taxation by the City of St. Louis.

We, therefore, protest against your enforcement of the payment of this amount of $5,408.79 as unlawful and we notify you that this payment thereof is not made voluntary, but is duress as above stated, and we propose to institute suit against the City of St. Louis for the amount of said overpayment as above set forth, and we make this payment solely in order to secure the issuance of said license, authorizing us to continue in business and to save ourselves from irreparable loss from interruption of the same.

Appreciating your personal courtesy in this mat-er, we remain,

Yours truly,

THE AMERICAN MANUFACTURING COMPANY,

By —— ——,

Treasurer."

Mr. Wallace: I also desire to offer in evidence copy of a check payable to Louis Alt, given by The American Manufacturing Company, dated July 30, 1910, in the sum of $5,408.79.

(Said check is as follows:)

"Voucher No.——Check No. 19111.

The State National Bank of St. Louis.

St. Louis, July 30, 1910. 190—.

Pay to the order of Louis Alt, License Collector, $5,408.79 Five thousand four hundred eight & 79-100 Dollars in full for City and State license 1910.

W. Taxes 5408.79 Not over Six Thousand $6000.

THE AMERICAN MANUFACTURING COMPANY,

220 N. 4th St., St. Louis.

By FRANK WELTIN,

Cashier.

BENJ. GRATZ,

Director.

36 This check is not payable unless signed and countersigned."

On the margin of said check appears:)

"Approved for payment F. W."

Mr. Wallace: I now desire to offer in evidence also a license made to The American Manufacturing Company, expiring July 1, 1911, authorizing it to do business as a manufacturer in this city.

(Said license is as follows:)

"Expires July 1, 1911.

Manufacturer's State and City License.

STATE OF MISSOURI,
City of St. Louis:

To all who shall see these presents—Greeting: Know Ye, That the American Mfg. Co. having paid to Louis Alt, License Collector of the City of St. Louis, the sum of Five thousand four hundred and eight and 79-100 Dollars, being the tax and license upon them as Manufacturers.

Therefore, the said Parties *is* hereby authorized to manufacture the following articles, viz: except as otherwise provided by Ordinance, at any one place of business within the City, for the year ending on the first Monday in July 1911, and to sell and dispose of such articles so manufactured at the same place, or any one place in the city.

37	City tax	$ 871.40	
	City license	1,182.00	
			$2,053.40
	State tax	$ 653.55	
	State interest tax	87.14	
	School tax	2,614.20	
	Register's fee	.50	3,355.39
	Total		$5,408.79

In testimony Whereof, I, B. J. Taussig, Comptroller of the City of St. Louis, have hereunto set my hand this 29th day of July, 1910.

B. J. TAUSSIG,
Comptroller.

Delivered this 29th day of July, 1910.

LOUIS ALT,
License Collector.
By ——— ———,
Deputy.

M. R. H. WITTER, *Register.*

No. 756.

(On the margin of said license appears): "Bring this license when you call to renew. This license is not transferable."

(On the back of said license appears): "Paid July 29, 1910."

Q. Were the copies of the letters that have just been introduced found like the others you have testified about in your files.
A. I had them all in a private file. I kept all the papers together.

Q. The originals of these letters were taken by you to Mr. Alt personally?

A. Yes, sir.

Q. And they are all correct and true?

A. Yes, sir.

38 Cross examination.

(Questions by Mr. Young, Counsel for Defendant.)

Q. I will take up the first count of this petition first. This is for taxes paid in the year 1909—you made a return in 1909—that is your original return (handing paper to the witness), isn't it? Well, that is the return of The American Manufacturing Company in 1909?

A. Yes, sir; sure.

Q. Now, this shows—this statement which is attached, pasted to the return, was filed by you at the time you made the return and made a part of the return, wasn't it?

A. Yes, sir.

Q. This statement shows that there was "Imported Jute Butts in original packages imported by American Manufacturing Company for the purpose of being manufactured by it into bagging, and in its warehouses $180,794.22?

A. Yes, sir.

Q. Had any of these packages been broken?

A. No, sir.

Q. What were the original packages?

A. Just the way we received them from the ship side.

Q. How were they done up?

A. In a compressed bale, about the size of a bale of hay and tied with rope, and they are baled under a very heavy pressure, and it takes a couple of ton steam to break them apart when they are opened.

Q. You got them from a railroad?

A. It comes by Galveston by boat.

Q. And these bales are not done up in large boxes or packages?

A. About the size of a bale of hay.

Q. But they are not enclosed in larger packages?

A. No, sir; they are only in separate packages or bales.

39 Q. Are you certain that this one hundred and eighty-odd thousand dollars represents bales that had not been broken?

A. Yes, sir; that is, it is taken from figures furnished to me by people keeping the stock records and taken at the market valuation.

Q. Now, coming to the sales. How did you make up the sum of $1,558,185.33 as sales made outside the State of Missouri?

A. Well, do you want me to explain how I arrived at those figures?

Q. Yes, sir.

A. The invoices that I receive from the different points show the origin of the goods and the point of delivery. My journal sheets, I

charge the customer up with the invoices, and I have a journal sheet showing where those goods are distributed, and they run to the end of the month and at the end of the month is credited up to that particular origin; and it has to agree with our stock records.

Q. Now, this total is made up first of sales made through St. Louis office and filled from stock made in New York and shipped from points other than St. Louis to States other than Missouri, and the amount here is $1,274,780.33?

A. Yes, sir.

Q. Were those sales made from New York?

A. From New York?

Q. Yes, sir.

A. No, they were made at the points where the goods were delivered.

Q. From stock made in New York?

A. Yes, sir.

Q. And then it says: "Shipped from points other than St. Louis?"

A. Yes, sir; they were shipped out of Galveston, New Orleans, Savannah; that kind was goods made in India, Calcutta.

Q. And then the other item is: "Sales made through St. Louis office and filled from stock made in St. Louis, but shipped from points other than St. Louis to States other than Missouri, $283,405.00?

A. That stock was made here.

Q. That was made in St. Louis?

A. Yes, sir.

Q. Then you received—where are your warehouses?

A. Here in town.

Q. How many have you in the United States?

A. I couldn't tell you that; we have got a dozen of them here in St. Louis, alone, at different points. I don't know how many they have in New York. They hold the bagging here—we store it here as long as we can find a warehouse to take them, if we can't get any more room here, then we ship to Memphis, or points like New Orleans.

Q. And then when you subsequently get orders, you fill those orders either out of your warehouses here or out of warehouses in some other state?

A. Yes, sir.

Q. Well, then, these sales—were all of this last item of goods, which had been made in St. Louis and which had been warehoused in some other state, because you didn't have room here?

A. Well, they may lay there for a year.

Q. And then subsequently they were shipped on orders received at St. Louis and sales made at St. Louis?

A. They might have been shipped on an order or contract made at Galveston.

Q. But this return shows that they were sales made through the St. Louis office?

A. Yes, sir.

Q. The sale was consummated at St. Louis?

A. It was handled like the rest of them.

Q. Can you state about how long these goods laid in warehouses in other states before they were finally delivered to purchasers?

A. Well, now, that all depends upon the crop of cotton.

41 Take last year, we didn't have a yard laying around any place. And some years we are liable to carry over four or five million yards of the stuff, some of it at Memphis. I know of some stuff down there for several years before it was disposed of.

Q. You have offices in other cities besides St. Louis?

A. Yes, sir.

Q. And sales are made through other offices that are not made through the St. Louis office at all?

A. Yes, sir.

Q. Now, let's take the second count: You made a return in 1910 also, didn't you?

A. Yes, sir.

Q. Now, that is your return for 1910, together with this attached affidavit and made a part of the return?

A. Yes, sir.

Q. In this case, your claim doesn't include any sales made at the St. Louis office of goods manufactured in St. Louis but located in other states at the time of the sales?

A. No, sir.

Q. You made no claim on the second count for those goods?

A. I don't know why they left it out. It is an oversight, I suppose.

Q. Well, in this case, then, it is simply a question of sales negotiated in St. Louis, but approved and confirmed in the home office in New York of merchandise located in other states, and at no time in St. Louis?

A. No, sir.

Q. They never had been in Missouri at all?

A. No, sir.

Q. That is, $774,456.45?

A. Yes, sir.

Q. And I believe there is no controversy here about imported goods in the original packages—yes, $34,834.40?

A. Yes, sir.

Q. Now, these were also jute?

A. Yes, sir.

42 Q. Do you know how long they had been in your warehouse?

A. No, I don't know; we get them in very nearly every year.

Q. You get about one cargo a year?

A. Yes, sir.

Q. And are they all used up during the year?

A. That depends upon the cotton crops; if you need more bagging, they will put in more time and use more of the raw material.

Q. You receive this consignment and then hold it in your warehouses until you need it for manufacturing purposes?

A. Yes, sir: we manufacture it as fast as we can in the ordinary run of business, and if they taken more we work overtime.

Q. It is impossible for you to state, on the 24th day of June, 1910, how long these packages had been in your possession?

A. No, sir; I couldn't state that positively.

Q. Do you ever sell any of the raw material?

A. Not to my knowledge. We are the only people that use that stuff here in St. Louis as far as I know.

Redirect examination.

(Questions by Mr. Wallace, Counsel for Plaintiff:)

Q. You have been asked about certain goods that were manufactured here, and then sent out of the State and then sold?

A. Yes, sir.

Q. For how long, if you know, was it after these goods were sent out of the State before they were sold?

A. Why, it would run from four or five months to possibly more than a year.

Q. Were they listed for taxes while here?

A. They were, when they were in the stock here.

Q. Do you know whether taxes were paid on them outside
43 of the State, when they were sent outside of the State?

A. I know positively at Memphis.

Q. Were any of the imported bales of material that you have testified about held in St. Louis in the warehouses any longer than was necessary?

A. No, sir; no longer than was necessary to conduct the business.

JOHN H. FITZGERALD, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

(Questions by Mr. Wallace, Counsel for Plaintiff:)

Q. What is your name?

A. John H. Fitzgerald.

Q. What position did you hold with The American Manufacturing Company in June, 1908?

A. I was superintendent of the handling of raw materials; superintendent of the receiving.

Q. For the year 1909?

A. Did you say 1908 first?

Q. I meant 1909.

A. 1909 and not '08.

Q. What position did you hold with the company during 1909?

A. I was superintendent.

Q. As such what was your duties?

A. To superintend the stock records and the checking of the raw

materials that were received. That is, seeing that they were received.

Q. You kept a set of books for that purpose?

A. Yes, sir.

Q. Did you examine those books of June, 1909, to find out how much imported raw material was on hand for the purpose of listing it for taxes?

A. Yes, sir; I gave a pencil memorandum to Mr. Weltin.

Q. Have you that memorandum that you made then now?

A. Yes, sir.

44 Q. How much imported material was on hand at that time?

A. 54,993 bales.

Q. Of jute?

A. Yes, sir.

Q. How were those records, from which you took that, made up?

A. Why, they were—they were records that I have—that is, a condensed record of various reports from our warehouses and mills.

Q. Made by about how many people?

A. Probably twenty or twenty-five people.

Q. From how many factories?

A. Two.

Q. Were the reports sent in daily?

A. Yes, sir.

Q. And this was taken from a record of those reports?

A. Yes, sir.

Q. Is that correct?

A. Positively; yes, sir.

Q. Were the number of bales that you testified were on hand in the original packages?

A. Yes, sir.

Q. They were in the original packages?

A. In the original packages.

Q. Awaiting what?

A. Awaiting manufacture.

Q. For the year 1910, were you occupying the same position with the company?

A. Yes, sir.

Q. Did you at that time examine those records to find out how much imported raw material, if any, was on hand?

A. Yes, sir.

Q. How much?

A. A total of 10,337 bales.

Q. Are those figures from which you testified taken from the records you have just testified about?

A. Yes, sir.

Q. Were they correct?

A. Yes, sir.

Q. And was all that material in the original bales or packages?

A. Yes, sir.

Q. Awaiting what?
A. Manufacture.

45 FRANK WELTIN, having been heretofore duly sworn, upon being recalled to the witness stand, testified as follows:

Redirect examination.

(Questions by Mr. Wallace, Counsel for Plaintiff:)

Q. Please state at what valuation the bales of imported material for the year 1909 were given in on your returns?
A. We got it off of our cost sheets at five dollars a bale about. In 1910 it was $5.60 a bale, and it was $5.10 the year before. I have got the papers here.
Q. Well, for the year 1909 the valuation was, less the per cent deducted, $180,794.22, that you have referred to?
A. Yes, sir.
Q. And for the year 1910 the valuation of the property, less the deducted per cent, was $34,834.40?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.

Miss BARBARA WALTHER, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

(Questions by Mr. Wallace, Counsel for Plaintiff:)

Q. What position did you have with the license collector during the years 1910 and '09?
A. Stenographer, and I acted as secretary to the Board of License Revision during their session.
Q. Are you here today in his place?
A. Yes, sir.

Q. Were you familiar with the details of his office and
46 the assessments we have been asking about here today?
A. Yes, sir.

Q. The American Manufacturing Company claims to have paid for its license for the year ending on the first Monday of July, 1910, the sum of $1,919.76 on sales made of goods outside of the state at the time of their sale and delivery, and also as taxes on imported material in the original package—was that sum paid into the treasury of the City of St. Louis?
A. Yes, sir.
Q. By Mr. Alt?
A. Yes, sir.
Q. On what date?
A. Why, we make settlements weekly. I don't know just what

date this happened to fall on, but it would be the following Monday.

Mr. Wallace (addressing Mr. Young): Is it admitted that the date is June the 9th?

Witness: I can tell you exactly the date the license was paid, if that is what you want to know.

Q. If you please—the date when the money was paid to the license collector is what I want, please.

A. Do you want it for the year 1910?

Q. The amount that was paid to the license collector in 1909, and for the year succeeding—when was that paid to the license collector?

A. July 9, 1909.

Q. When was the amount for the year ending July 1, 1911, paid to the license collector by the plaintiff?

A. On August 1.

Q. August 1?

A. Yes, sir.

Q. What year?

A. 1911.

Q. Well, it was 1910 that I want.

A. I guess I haven't got one here; there were two paid in one year, because of the division of two companies.

Q. Can you state whether that is correct?

A. I haven't that stub with me, and I can't state whether that is the date or not.

47 Q. But you say that it was paid by him to the city weekly; is that correct?

A. Yes, sir.

(Questions by Mr. Judson:)

Q. Will you please state in 1908 when Mr. Alt made his settlement with the city after the payment by the Simmons Company?

A. We made a settlement with the city the Monday following any date of payment.

Q. The custom is that whenever it was paid, it was paid over to the city the following Monday?

A. Yes, sir.

Q. And paid over to the Board of Education at the same time?

A. Yes, sir.

Q. And that was the same way in 1909?

A. Yes, sir. I know the Board of Education—we always file their check with the trust company the Monday following the date of payment; the city, I am not so positive whether it was Monday or Tuesday, but it was either one of those dates, following the date of payment.

Mr. Young: I offer in evidence the return made by The American Manufacturing Company on June 30, 1909, together with the statement attached to it and made a part of it.

(Said return and statement thereto attached, is in words and figures as follows:)

Statement of Tax Returns of American Manufacturing Company.

Greatest amount of raw materials and finished goods on hand at any time between the first Monday of March and the first Monday of June, 1909.

I.

Raw Material.	Value.	Taxes.
1. Imported Jute Butts in original packages imported by American Manufacturing Company for the purpose of being manufactured by it into bagging, and in its warehouses	$180,794.22	$1,753.71
2. Domestic goods for same purpose	.00	.00

II.

Tools.

3. Tools, machinery and appliances	60,000.00	582.00

III.

Finished Products.

4. Merchandise and finished products	250,244.55	2,427.38

IV.

Aggregate amount of sales for the year ending June 1, 1909:

1. Sales made through St. Louis office and shipped from stock in said city to points in the State of Missouri	59,313.74	59.32
2. Sales made through St. Louis office and shipped from stock in St. Louis to points in other States	407,805.38	407.81
3. Sales made through St. Louis office and filled from stock made in New York and shipped from points other than St. Louis to States other than Missouri	1,274,780.33	1,274.79
4. Sales made through St. Louis office and filed from stock made in St. Louis, but shipped from points other than St. Louis to States other than Missouri	283,405.00	283.41
	(1,558,185.33)	
Total		$6,788.42

AMERICAN MANUFACTURING COMPANY,

By —— ——,

Treasurer."

(Attached thereto is the following:)

"Stock, $436,531.91. Sales, $1,486,190.89.

No. 227. Manufacturers of
District 10. Bagging.

STATE OF MISSOURI,
City of St. Louis, ss:

Be It Remembered, That on this 30th day of June, 1909, before me personally appeared American M'f'g Co. Place of business, Rialto Bldg. — St., who, being duly sworn, saith that the greatest aggregate value of all raw material and finished products on hand on any one day between the first Monday in March and the first Monday of June, 1909, and of all tools, machinery and appliances used in conducting above manufacturing business owned the first day of June, 1909, were:

50	Raw materials		$180,794.22
	Finished products		250,244.55
Tools, machinery			60,000.00
Horses, wagons, appliances			
City tax		$982.10	
City license		2,026.00	
			3,008.10
State tax		736.65	
State int. tax		98.22	
School tax		2,946.60	
Register's fees		.50	3,781.97
Total			$6,790.07

The affiant further saith that the aggregate amount of all sales made during the year ending on the first Monday of June, 1909, was 2,025,304.45 Dollars.

Signature: AMERICAN M'F'G CO.,
By L. F. JONES.

LOUIS ALT,
License Collector.
HOBERG,
Deputy."

$2,025,304.45.

(Attached to the above is the following:)

"Total sales include the following items:

To points in Missouri	$59,313.74
To points outside Missouri	407,805.[illegible]

The raw material includes imported goods in original packages in warehouse of importer awaiting manufacture by importer to the amount of $180,794.22."

Mr. Young: I also offer in evidence the return made by The American Manufacturing Company on June 24, 1910, and also the statement attached to it and made a part of it.

51 (Said return and statement thereto attached is in words and figures as follows, to wit:)

"STATE OF MISSOURI,
City of St. Louis:

The American Manufacturing Company files a supplemental statement of sales in its application for manufacturer's license for the year ending June 30, 1911, as follows, to wit:

Sales for the year ending May 31, 1910, made in St. Louis office as heretofore reported.....	$ 11,470.48
Sales negotiated in St. Louis office, but approved and confirmed in the home office in New York, Merchandise delivered from St. Louis to points in Missouri	37,726.70
Sales negotiated in St. Louis office, but approved and confirmed in the home office in New York, merchandise delivered from St. Louis in interstate commerce to points outside of Missouri.....	230,913.88
Sales negotiated in St. Louis office, but approved and confirmed in the home office in New York of merchandise manufactured in St. Louis, but located in other States at time of sale.....	127,156.58
Sales negotiated in St. Louis office, but approved and confirmed in the home office in New York of merchandise located in other States at time of sale and at no time in the State of Missouri.....	774,456.41
Total	$1,181,724.05

THE AMERICAN MFG. CO.,
By BENJ. GRATZ, *Treas.*

52 STATE OF MISSOURI,
City of St. Louis, ss:

Personally appeared before me, a Notary Public, duly qualified, Benj. Gratz, to me known, who being duly sworn, makes oath that the above statement is true and correct.

(Signed) WM. T. MAGINNIS,
Notary Public.

My commission expires May 28, 1912."

(Attached to the above is the following:)

"Stock, $491,038.77 Sales, $2,025,304.45.

No. 222. Manufacturers of
District. No.— Bagging.

STATE OF MISSOURI,
City of St. Louis, ss:

Be it remembered, That on this 24th day of June, 1910, before me personally appeared American Mfg. Co. Place of business Rialto Bldg.—St., who, being duly sworn upon oath, saith that the greatest aggregate value of all raw material and finished products on hand on any one day between the first Monday of March and the first Monday of June 1910, and of all tools, machinery and appliances used in conducting above manufacturing business owned the first day of June, 1910, were

Imported goods in original packages	$ 34,834.40
Finished products	340,848.90
Tools, machinery	60,000.00
Horses, wagons, appliances	
Total	$435,683.30

City tax	$ 871.40	
City license	1,182.00	$2,053.40
53		
State tax	653.55	
State int. tax	87.14	
Register's fees	.50	3,355.39
Total		$5,408.79

The affiant further saith that the aggregate amount of all sales made during the year ending on the first Monday of June, 1910, was (in red ink) $1,181,724.05 (in black ink and crossed out) $11,470.48 dollars.

(Signature) THE AMERICAN M'F'G COMP'Y,
By BENJ. GRATZ,
Treas.
LOUIS ALT,
License Collector.
L. ——,
Deputy.

Sworn to and subscribed before me on above date.
$1—.
Above change in sales was made at the request of Mr. Benj. Gratz and fully explained in attached affidavit.

L. ALT,
License Collector.

July 22, 10."

Thereupon the defendant requested the Court to give the following declarations of law, to-wit:

1.

The Court declares, as a matter of law, that the plaintiff is not entitled to recover the taxes paid on account of sales made through its St. Louis office and filled from stock made in St. Louis but shipped from points other than St. Louis to states other than Missouri, being a part of the license taxes paid and sued for in the first count of plaintiff's petition.

54

2.

The Court further declares, as a matter of law, that in case judgment is entered in favor of the plaintiff, the plaintiff is not entitled to any interest against the defendant City of St. Louis.

Which said declaration of law the Court refused, to which action of the Court the defendant at the time then and there duly excepted.

And thereupon on said 20th day of October, 1913, the Court entered a finding and judgment in favor of the plaintiff and against the defendant on the first count for $2,412.79, and on the second count for $1,007.45.

And, thereafter, on the 23rd day of October, 1913, and within four days after the rendition of said judgment, and during said October Term of said Court, defendant filed in said Court its motion for a new trial, which said motion is in words and figures as follows, to-wit:

In the Circuit Court of the City of St. Louis.

No. 82,977.

Div. 7.

THE AMERICAN MANUFACTURING COMPANY (a Corporation), Plaintiff,

vs.

THE CITY OF ST. LOUIS, Defendant.

Motion of Defendant for a New Trial.

Now comes the defendant in the above-entitled cause and moves the Court to set aside the judgment entered herein and to
55 grant a new trial, for the following reasons, to-wit:

1. The judgment is against the law as to each count of the plaintiff's petition.

2. The judgment is against the evidence as to each count of the plaintiff's petition.

3. The Court erred in refusing to give the declarations of law requested by the defendant.

4. The finding and judgment of the Court is excessive as to each count of the plaintiff's petition.

5. The Court erred in ruling that there was any evidence that the taxes sued for were paid by the plaintiff under duress, and in not ruling that the payment of said taxes was a voluntary payment, which could not be recovered back.

WM. E. BAIRD,
TRUMAN P. YOUNG,
Attorneys for Defendant.

And thereafter, on November 10, and during the October Term, 1913, of said court, the Court overruled said motion for a new trial.

To which action of the Court, in overruling said motion for a new trial, defendant then and there at the time duly excepted.

And thereafter, on November 20, 1913, and during said October term, 1913, of said court, defendant filed in court its affidavit for an appeal and its appeal bond and the Court approved said bond
56 and allowed an appeal to defendant to the Supreme Court of the State of Missouri.

And now, in order that the above matters and things may be made a part of the record in this cause, said defendant tenders this its bill of exceptions and prays that the same may be signed, sealed and made a part of the record in this cause, which is accordingly done on this 3rd day of April, 1914.

LEO S. RASSIEUR,
Judge of the Circuit Court of The City of St. Louis, Division No. 4, Acting for and at Request of Judge Taylor, Division No. 2, in His Absence.

A certified copy of the judgment and order allowing the appeal was filed in this court on the 27 day of March, 1914.

CHARLES H. DAUES,
TRUMAN P. YOUNG,
Attorneys for Appellant.

57 APPENDIX

(To Defendant's Foregoing Bill of Exceptions).

Articles X and XI, Chapter 31, *of the Revised Code of St. Louis,* 1907.

Article X.

Manufacturers.

Section 2184. Manufacturer defined.—Every person, firm or corporation, who shall hold or purchase personal property for the purpose of adding to the value thereof, by any process of manufacturing, refining, or by the combination of different materials, or shall purchase and sell manufactured articles such as [he manufactures] or uses in manufacturing, shall be held to be a manufacturer for the purpose of this article, except as is or may be otherwise provided by ordinance.

Sec. 2185. License required—amount, etc.—Every person defined to be a manufacturer by the preceding section shall, before doing or offering to do business as such, procure from the license collector a license therefor, under the provisions of this article, for which there shall be paid the same rate as merchants are required to pay for a license; provided, in collecting license on the sales of tobacco of any kind, on high-wines and on beer, the manufacturer shall be permitted to deduct the amount of tax paid the United States from the total sales made by him or them, and if he shall, within the City of St. Louis, do or offer to do any manufacturing business without first complying with the provisions of this article, or shall otherwise violate or fail to comply with any of the provisions of this article, he shall be deeemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars nor more than
58 five hundred dollars for each offense. No license shall be assignable or transferable.

Sec. 2186. Statement of manufacturer required—license, when paid—publication.—The license collector or his deputies shall, after the first Monday of March and before the first Monday in June in each year, call on each and every person defined by this article to be a manufacturer, and notify him to furnish, and it shall be the duty of such person, whether so notified or not, to furnish said license collector: First, a statement of the value of the greatest aggregate amount of raw materials, merchandise and finished products (to be listed separately) which he had on hand between the first Monday of March and the first Monday in June in each year on any one day

between said times, as well as all tools, machinery and appliances used in conducting his business or owned by him on the first day in June of each year; second, a statement of the aggregate amount of all sales made by him during the year next preceding the first Monday of June, which statement shall be made in writing and delivered to the license collector, verified by the affidavit of the manufacturer, or officer of the corporation making it, if residing in the city; if not, then by some credible person authorized to do so, and the amount of tax and license due thereon shall be paid to the license collector, at his office, on or before the first Monday of July in each year. It shall be the duty of the license collector, when so directed by the comptroller, to give notice by publication in the papers doing the city printing of any of the provisions or requirements of this article.

Sec. 2187. Ad valorem tax to be levied.—In addition to the license hereinbefore provided for, there shall be levied and collected on the value of the raw materials, merchandise and finished products,
59 tools and machinery and appliances contained in the statement as aforesaid, an annual ad valorem city tax at the same rate as is required by ordinance for the taxing of merchants, within the several districts of the city, which tax and license hereinbefore mentioned shall be paid to the license collector, on or before the first Monday of July in each and every year.

Sec. 2188. Form of license.—It shall be the duty of the comptroller to furnish the license collector with blank licenses, which license shall be charged to the license collector, and his receipt taken therefor. Said license shall be in the following form: No —— manufacturers' city license. The city of St. Louis: To all who shall see these presents, greeting: Know ye that —— having paid ——, license collector of the city of St. Louis, the sum of —— dollars, being the license tax upon —— as manufacturer; therefore, the said —— is hereby authorized to manufacture the following articles, viz.: —— except as otherwise provided by ordinance, at any one place of business within the city for the year ending on the first Monday of July, 19——, and to sell and dispose of such articles so manufactured at the same place, or any other one place in the city. In testimony whereof, I ——, comptroller of the city of St. Louis, have hereunto set my hand this —— day of ——, 19——, —— comptroller. Attest: ——, register. Tax ——, license, ——, delivered this —— day of ——, 19——, ——, license collector.

Sec. 2189. Licenses issued—to compare with stubs of blanks.—The blank licenses provided for in the next preceding section shall be bound in book form with suitable margins or stubs, on which shall be made and entered the sworn statements required by this
60 article. There shall also be entered upon the margins or stubs the amount of tax and license collected in accordance with the statement so made; said margins or stubs shall be returned with the license collector's statement of the items and aggregate amount collected to the comptroller, who shall examine and compare the same and charge the aggregate amount collected to the license collector.

Sec. 2190. Bond.—When any manufacturer, manufacturing firm or corporation shall commence the business of manufacturing in the city of St. Louis, after the first Monday in July in any year, he or

they shall take out a manufacturers' license therefor, but before any such license shall be issued to him or them, he or they shall execute a bond to the city, with two or more sufficient securities, who shall be freeholders at the time, or deposit with the license collector bonds of the city of St. Louis or other securities of equal value, conditioned that he or they will after the first Monday of June next succeeding and before the first Monday of July thereafter, furnish to the license collector, first, a statement, verified as therein required, of the value of the greatest aggregate amount of raw materials, merchandise and finished products (to be listed separately), which he had on hand between the first Monday of March and the first Monday of June or any one day between said times, as well as all tools, machinery and appliances used in conducting his or their business, or owned by him or them on the first day of June; second, a statement, verified as herein required, of the aggregate amount of all sales made by them during the year or part of year from the time he or they commenced business to the first Monday of June next succeeding, and that
61 he or they will pay to the license collector the ad valorem tax and license due upon the amounts of such statements, which bond or securities shall be in such sum as the license collector may deem sufficient to protect the city's interests, and shall be approved by the license collector and his approval indorsed thereon, and upon which statement there shall be paid the same rate of taxes and license as other manufacturers pay; but the amount of ad valorem tax demanded shall be such a fraction of the full annual tax as the time from the day on which business was commenced to the first Monday of July, next succeeding, bears to one year; and every such manufacturer, manufacturing firm or corporation who shall fail or neglect to perform and fulfill the conditions of the bond executed by him or them, as herein provided, shall be deemed to have forfeited said bond, and in that event it shall be the duty of the comptroller to cause suit to be instituted thereon against the principal and all sureties of such bond, in the court having jurisdiction, or make sale of the securities deposited with him instead of a bond at public sale after having given ten days' notice thereof in the newspaper doing the city printing.

Sec. 2191. Account sales open to license collector.—It shall be the duty of each manufacturer, manufacturing firm or corporation to keep in a proper book and entered in ink an account of all sales made by him or them, which accounts shall always be open to the inspection of the license collector, to verify the returns made to him. The statements or returns made to the license collector under the requirements of this article shall not be made public, nor shall they be subject to the inspection of the municipal assembly.

Sec. 2192. Penalty for failure to make statement.—In case
62 any manufacturer, manufacturing firm or corporation shall fail, neglect or refuse to deliver the statements herein required, or pay the license and tax levied by this article on or before the first Monday in July of each year, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined as provided in section 2165, and in addition thereto the license collector shall assess the raw materials, merchandise, finished product, tools, machinery and appliances, and aggregate amount of all sales of such manufacturer, manufacturing firm or corporation, at double their value, to

be ascertained from the best information he can obtain, and he shall report the delinquent to the city attorney.

Sec. 2193. Penalty for making false statement.—Whoever shall make or file with the license collector under the provisions of this article, a false statement under oath, shall, on conviction thereof, forfeit his license and pay a fine of not exceeding five hundred dollars. And it shall be the duty of the license collector to carefully examine all statements filed with him, and to prosecute all violations of this article, according to law; provided, that before instituting any such prosecution, he shall give the manufacturer an opportunity of explaining his statement and of correcting it, if inadvertently made. And if it shall appear to the license collector that such false statement was willfully and corruptly made, he shall report all the facts to the grand jury.

Article XI.

Merchants.

Section 2194. Merchant—term defined.—Whoever shall deal in the selling of any goods, wares or merchandise at any store,
63 stand or place occupied for that purpose within the city, or at the Merchants' Exchange, is hereby declared to be a merchant, except as is or may be otherwise provided by ordinance.

Sec. 2195. License required.—Every person defined to be a merchant by the preceding section shall, before doing or offering to do the business as such, procure from the license collector a license therefor, under the provisions of this article, and if he shall, within the city of St. Louis, sell or offer for sale any goods, wares or merchandise, without first complying with the provisions of this article, or shall otherwise violate or fail to comply with any of the provisions of this article, he shall be deemed guilty of a misdemeanor, and on conviction thereof, be fined not less than twenty-five dollars nor more than five hundred dollars for each offense.

Sec. 2196. License can not be assigned.—No license shall be assignable or transferable.

Sec. 2197. Statement of merchants.—The license collector or his deputies shall, after the first Monday in March and before the first Monday of June in each year, call on each and every person defined by this article to be a merchant, and notify him to furnish, and it shall be the duty of such person whether so notified or not to furnish, said license collector: First, a statement of the value of the largest amount of all goods, wares and merchandise which he may have had in his possession or under his control at any time between the first Monday of March and the first Monday of June in each year; second, a statement of the aggregate amount of all sales made by him during the year next preceding the first Monday of June, which statement shall be made in writing and delivered
to the license collector, verified by the affidavit of the mer-
64 chant or officer of the corporation making it if residing in the city; if not, then by some credible person duly authorized to do so, and the amount of the tax and license due thereon shall be paid to said collector at his office on or before the first Monday of July

in each year. It shall be the duty of the license collector, when so directed by the comptroller, to give notice by publication in the papers doing the city printing of any of the provisions or requirements of this article.

Sec. 2198. Ad valorem and additional tax—rate—time of payment.—There shall be levied and collected on the value of the largest amount of all goods, wares and merchandise stated as aforesaid an ad valorem tax of one-fifth of one per centum on the value of all such goods, wares and merchandise, situated within the limits of the city, for municipal purposes. This tax shall be paid to license collector on or before the first Monday of July in each year, together with a license which shall be paid every year by the merchant, mercantile firm or corporation (in addition to the per centum hereinbefore stated) of one dollar on each one thousand dollars or fractional part thereof, of sales made by such merchant, mercantile firm or corporation, provided that no license shall be issued under the provisions of this article for a less sum that five dollars, which sum shall be paid by each merchant, mercantile firm or corporation doing a business of five thousand dollars or less per annum.

Sec. 2199. Form of license.—It shall be the duty of the comptroller to furnish the license collector with all blank licenses, which licenses shall be charged to the license collector and his receipt taken
65 therefor. Said licenses shall be in the following form: Merchant's city license, No. —. The City of St. Louis: To all who shall see these presents, greeting: Know ye that — having paid to —, license collector of the City of St. Louis, the sum of —— dollars, being the tax and license upon —— as a merchant, therefore the said —— is hereby authorized to sell any goods, wares and merchandise of any description, except as otherwise provided by ordinance at any one store, stand or place of business within the city, or at the Merchants' Exchange, for the year ending on the first Monday of July, 19——. In testimony whereof, I, ——, comptroller of the City of St. Louis, have hereunto set my hand this —— day of ——, 19——. ——, comptroller. Attest: ——, register. Tax, ——; license, ——. Delivered this —— day of ——, 19——, ——, license collector.

Sec. 2200. Licenses issued to correspond with stubs.—The blank licenses provided for in the next preceding section shall be bound in book form, with suitable margins or stubs, on which shall be made and entered the sworn statements required by this article. There shall also be entered upon the margins or stubs the amount of tax or license collected in accordance with the statements so made; said margins or stubs shall be returned, with the license collector's statements of the items and aggregate amount collected, to the comptroller, who shall examine and compare the same, and charge the aggregate amount collected to said collector.

Sec. 2201. Bond.—When any merchant, mercantile firm or corporation shall commence business in the city of St. Louis, after the first Monday in July, in any year, he or they shall take out a merchant's license therefor, but before any such license shall be
66 issued to him or them, he or they shall execute a bond to the city, with two or more sufficient securities, who shall be freeholders at the time, or deposit with the license collector bonds of the

City of St. Louis or other securities of equal value, conditioned that he or they will, on or before the first Monday of July next following, furnish to the license collector, first a statement verified as required by this article, of the value of the largest amount of all goods, wares and merchandise he or they had on hand or subject to their control at any time between the first Monday of March and the first Monday of June next succeeding; second, a statement, verified as required by this article, of the aggregate amount of all sales made by them between the date upon which he or they commenced business and the first Monday of June next succeeding, and that he or they will pay to said collector the ad valorem tax and license due according to the provisions of this article, which bond or securities shall be in such sums as the license collector may deem sufficient to protect the city's interest, and shall be approved by him and his approval indorsed thereon. Upon such statements there shall be paid the same rate of taxes and license as other merchants pay, but the amount of ad valorem tax demanded shall be such a fraction of the full annual tax as the time from the day on which the business was commenced to the first Monday of July next succeeding bears to one year, and every such merchant, mercantile firm or corporation who shall fail or neglect to perform or fulfill the conditions of the bond executed by him or them as herein provided, shall be deemed to have forfeited said bond, and in that event it shall be the duty of the comptroller to cause suit to be instituted thereon against the principals and all such securi-
67 ties of such bond in the court having competent jurisdiction, or make sale of the securities deposited with him instead of a bond, at public sale, after having given ten days' notice thereof in the newspapers doing the city printing.

Sec. 2202. Account sales to be open to inspection.—It shall be the duty of each merchant, mercantile firm or corporation to keep a proper book, and enter in ink, an account of all sales made by him or them, which account shall always be open to the inspection of the license collector to verify the returns made to him. The statements or returns made to the license collector under the requirements of this article shall not be made public, nor shall they be subject to the inspection of any person except the mayor, comptroller and members of the municipal assembly.

Sec. 2203. Penalty for failure to make statement or pay license.—In case any person, mercantile firm or corporation shall fail, neglect or refuse to deliver the statement herein required and pay the tax and license levied by this article on or before the first Monday of July of each year, he or they shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined as provided for in section 2176, and in addition thereto the license collector shall assess the goods, wares, merchandise and aggregate amount of sales of such merchant, firm or corporation at double their value, to be ascertained by the best information he can obtain, and he shall also report the delinquent to the city attorney.

Sec. 2204. Penalty for making false statement.—Whoever shall make or file with the license collector, under the provisions of this article, a false statement under oath, shall, on conviction thereof,

forfeit his license and pay a fine not exceeding five hundred
68 dollars; and it shall be the duty of the license collector to carefully examine all statements filed with him and to prosecute all violations of this article according to law; provided, that before instituting any such prosecution he shall give the merchant an opportunity of explaining the statement and correcting it if inadvertently made; and if it shall appear to the license collector that such false statement was wilfully and corruptly made, he shall report all the facts to the grand jury.

(End of abstract for defendant) on (first appeal.)

Subsequent Proceedings on Remand.

Be it further remembered, that on February 20, 1917, dur-
69 ing the February (1917) Term of the Circuit Court of the City of St. Louis, Missouri, as appears by the record proper, there was filed therein the mandate and opinion of the Supreme Court of Missouri, made, entered and rendered on said defendant's appeal on January 29, 1917 (in cause No. 18,184 of said Supreme Court, styled The American Manufacturing Company, Respondent, vs. City of St. Louis, Appellant) during the October (1916) Term thereof, which said mandate and opinion (captions and clerk's certificates omitted) are as follows:

Mandate of the Supreme Court of Missouri.

(Entered January 29, 1917.)

"Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be reversed, annulled and for naught held and esteemed, and that the said appellant be restored to all things which it has lost by reason of the said judgment. It is further considered and adjudged by the Court that the said cause be remanded to the said Circuit Court of the City of St. Louis for further proceedings to be had therein, in conformity with the opinion of this Court herein delivered; and that the said appellant recover against the said respondent its costs and charges herein expended, and have execution therefor. (Opinion filed.)"

70 *Opinion of the Supreme Court of Missouri.*

(Delivered, in Banc, on January 29, 1917).

In the Supreme Court of Missouri, October Term, 1916.

In Banc.

No. 18184.

AMERICAN MANUFACTURING COMPANY, Respondent,

vs.

THE CITY OF ST. LOUIS, Appellant.

Appeal from the Circuit Court for the City of St. Louis.

This case, like the one numbered 18,185 decided at this term, is to recover license taxes paid the City of St. Louis by the plaintiff, a corporation of West Virginia of the same name as, and successor to, the plaintiff in the other case, in the manufacture of jute bagging.

The questions raised in this appeal are the same as those raised in the other case, with the addition that in this case the tax exacted for manufacturer's license was extended upon sales of goods manufactured in the City of St. Louis, and warehoused outside the State of Missouri, and sold and delivered from such warehouses to customers outside the state, for which, with other items not now in dispute, judgment was rendered for the plaintiff with interest at six percent from the date of payment.

The sales in dispute were described in the plaintiff's return as follows: "Sales made through St. Louis office and filled from
71 stock made in St. Louis, but shipped from points other than St. Louis to States other than Missouri." In its evidence its bookkeeper and cashier explained this by saying that the company had a dozen warehouses in St. Louis; that he did not know how many there were in New York, and that the bagging is stored in St. Louis as long as the company can find a warehouse to take it, and when the local capacity is exhausted it ships to Memphis or points like New Orleans, from which places orders are filled from goods made in St. Louis, which may lie there for a year.

In its letter June 23, 1910, transmitting a check tendered as payment of its license tax, the respondent wrote: "In explanation of the small aggregate amount of our sales for the year ending June 1, 1910, we would say that during that year the principal selling office of this company has not been in the City of St. Louis, as had been the case in prior years," and in a letter of July 21, 1910, made the following additional explanation: "Since our report for year ending June 30, 1909, was made, we made a very material change in our method of doing business with our home office in New York, so that substantially all our sales, though negotiated here, of merchan-

dise stored in this and other cities, are confirmed by and are not effective until they are confirmed by the home office in New York. We are advised by our counsel that sales so made are not taxable in the City of St. Louis."

The matters at issue in this appeal are (1) whether the circumstances under which the payment was made were voluntary or involuntary with respect to the right to recover it back; (2) whether interest was recoverable; and (3) whether the city had the
72 right to levy the license tax based on the amount of these sales.

We have stated these questions in the order named because the first two are decided by us in the other case, in which they were presented upon precisely similar facts and with the same arguments, and we see no reason to modify the opinion there expressed.

The important question relates to the nature of the tax, for the defendant city has not the right to levy a direct tax upon subjects of taxation outside the state from which it holds its powers. These subjects are persons, property and business, and each must be situated within the jurisdiction of the taxing power to authorize its exercise. The vital difference between these parties is whether the tax in question is a tax upon business done in the City of St. Louis or upon property situated in states other than Missouri. The dividing line must be definite however; for if a part of the subject upon which the tax is sought to be imposed is situated in another state we have no data by which it can be apportioned, and, as is said by Judge Cooley (1 Cooley on Taxation, 25) "The power of taxation, however vast in its character, and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state." On the other hand the state may exercise this sovereign right with respect to all persons, things and business activities which exist under the protection of its laws, and, as is said by the same distinguished author, (Ibid) "Unless restrained by provisions of the Federal Constitution, the power of the state as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."
73 These propositions have ceased to be subjects of discussion or argument.

It is evident that the ad valorem tax levied under our state laws upon merchants and manufacturers, is a tax upon property, as distinguished from taxes upon business. The same property would be subject to taxation while its situs is within the state, whether employed in any activity or not. The quality of value is the test of its character in this respect, while the mode, form and extent of this taxation are wholly within the broad powers of the state. In their exercise the legislature has prescribed the time and manner of the assessment of this class of property, and as one of the remedies for the collection of the tax, has provided that its payment shall be a condition of the right of the owner to transact the business in which the property has been employed or produced, until it shall be paid. This imposition has every element of a property tax, and is held to be such by this court. (Jarman v. Unionville School District, 246 Mo. 646; Carleton Dry Goods Co. v. Alt, 224 Mo. 493.)

Our statute (R. S. 1909, sec. 11,147) defines a "manufacturer" to be a "person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials." It is not disputed that under the broad provision of its charter the city of St. Louis has the power to license and tax manufacturers within its limits; nor that the power includes the right to impose a tax upon the transaction of their business. Adopting substantially the definition we have quoted from the statute, it has, by ordinance, forbidden them to pursue their
74 business within the city without procuring a license, and has prescribed the additional tax they shall pay for that purpose which is graduated to accord with the amount of business they shall carry to the point of realizing the profit or liquidating the loss by the sale of the product of their work. They may only buy and sell in pursuance of their business as manufacturers. That his right to pursue this business is the one thing he receives as compensation for this tax is evident; and that the method of fixing its amount by the amount that he realizes from the licensed activity is a just and equitable one is not disputed; nor is the inherent justice and fairness of postponing the payment until the realization of the result of the work. The tax is none the less a tax upon the business of manufacture pursued in the City of St. Louis under the protection of the laws of this state and the ordinances of the city. Any other interpretation of the ordinance under which the business is licensed would not only do violence to its terms but would ascribe to the legislative department of the city the absurd intention to give every person and corporation that might desire to avail themselves of it, the unlimited right to pursue the business of manufacturing in the city without license or the payment of any tax upon the privilege provided they would store their product outside the city limits and sell it through non-resident agencies, to customers in other states.

To sustain this proposition the respondent cites us to our own decision in banc in the case of American Manufacturing Company v. St. Louis, reported in 238 Mo. 267, in which the learned Judge who wrote the opinion said; (p. 279) "that a fair and reason-
75 able construction of defendant's ordinance is that it was only intended to cover sales actually completed; and shipments made from defendant city". The question now before us was not involved, either directly or indirectly, in that case; but the respondent, while it was pending here and under the advice of counsel "made a very material change" in its "methods of doing business" so that substantially all its sales, although negotiated in St. Louis, were not effective until confirmed by its home office in New York. The question is now for the first time before us in this case.

We hold that the tax in question is a tax upon the privilege of pursuing the business of manufacturing these goods in the City of St. Louis; that when the goods were manufactured the obligation accrued to pay the amount of the tax represented by their production when it should be liquidated by their sale by the manufacturer; that their removal from the City of St. Louis and storage elsewhere,

whether within or without the state worked no change in this obligation; that their sale by the respondent wherever they may have been stored at the time, whether it was done through its home office in New York or the office of its factory in St. Louis, should have been reported in its return to the license collector of the City of St. Louis and the amount included in fixing the amount payable on account its license tax.

The judgment of the trial court is accordingly reversed and the cause remanded with directions to enter judgment in accordance with the view here expressed.

STEPHEN S. BROWN,
Commissioner.

76 Railey, C., concurs.

Per Curiam: The foregoing opinion of Brown, C., is adopted as the opinion of the court. All concur.

Per Curiam in Banc: The foregoing opinion of Brown, C., in Div. No. 1, is adopted by the Court in Banc. All concur.

Motion for Judgment on First Count.

Be it also remembered that on March 8, 1917, during said February (1917) term of said Circuit Court of the City of St. Louis, Missouri, the said plaintiff, The American Manufacturing Company, by its attorneys, filed therein in this cause its Motion for Judgment on the First Count of its said petition, as appears by entry in the record proper to that effect on that date. (See pages 77-79 of this Abstract for copy thereof.)

Motion Overruled.

On March 8, 1917, during said February (1917) Term of said Circuit Court, said plaintiff's said Motion for Judgment was overruled by said Court, as appears by entry to that effect in the record proper.

Be it also remembered that on March 8, 1917, during said February (1917) term of said Circuit Court, there was thereupon by said Circuit Court made and entered, on the several counts of said petition, as appears by the record proper, the following

Second Judgment of Circuit Court.

(Omitting caption.)

"Again come the parties in this cause, by their respective attorneys, and defendant submits to the Court the opinion and
77 mandate of the Supreme Court upon said defendant's appeal herein, as heretofore transmitted to and filed in this Court, and plaintiff and defendant submit to the Court the several motions

of plaintiff for judgment upon each count of the petition, and the Court, having duly heard and considered the same, it is ordered by the Court that plaintiff's motion for judgment for $1,919.76 upon the first count of the petition be and the same is hereby overruled, and it is further ordered by the Court that plaintiff's motion for judgment upon the second count of said petition be and the same is hereby sustained in so far as is shown by this judgment, but not otherwise; and now, pursuant to said mandate and opinion of the Supreme Court of Missouri, in so far as the same affirms the findings heretofore made and entered herein, and no further, this Court doth find for plaintiff as to the first count of said petition, in the sum of one thousand, six hundred and thirty-six dollars and thirty-five cents, and the Court doth find for the plaintiff as to the second count of said petition in the sum of eight hundred and forty-four dollars and twelve cents, it is therefore considered and adjudged by the Court that plaintiff recover of said defendant upon the first count of plaintiff's petition the sum of one thousand, six hundred and thirty-six dollars and thirty-five cents ($1,636.35) and that plaintiff recover of said defendant upon the second count of said petition the sum of eight hundred and forty-four dollars and twelve cents ($844.12) and that plaintiff recover of defendant its costs herein and have execution therefor, pursuant to this judgment. Draft filed."

78 *Motion for New Trial as to First Count of Petition.*

On March 10th, 1917, during said February (1917) Term of said Circuit Court and within four days after the entry of the foregoing judgment, said plaintiff filed its Motion for New Trial as to said first count of said petition, as appears by entry to that effect on that date in the record proper.

Motion for New Trial Overruled.

On March 16, 1917, during said February (1917) Term of said Circuit Court, said plaintiff's said Motion for a New Trial as to said first count of said petition was overruled, as appears by entry to that effect on that date in the record proper.

Plaintiff's Bill of Exceptions.

On March 21, 1917, during said February (1917) Term of said Circuit Court, said plaintiff's Bill of Exceptions was duly allowed, filed, signed and sealed and made part of the record herein by said Court, as appears by entry in the record proper herein on said date; and same (omitting caption) is as follows:

Plaintiff's Bill of Exceptions.

Be It Remembered, That heretofore, to-wit, during the February (1917) term of this Court, on the 20th day of February, 1917, there

was remitted to and filed in this Court the opinion and mandate of the Supreme Court of Missouri, delivered and rendered (on defendant's appeal heretofore prosecuted) during the October (1916)
79 term of said Supreme Court, on January 29, 1917, which said opinion and mandate are as follows:

(Said opinion and mandate appear here in words and figures as shown at pages 68-74 and 67, respectively of this Abstract; and for this reason are not here again copied in full.)

That thereafter, during said February Term of this Court, on the 8th day of March, 1917, plaintiff, The American Manufacturing Company, by its attorneys, filed herein its Motion for Judgment on the First Count of its petition, which said Motion is as follows:

"CITY OF ST. LOUIS, *ss:*

In the Circuit Court, February Term, 1917.

No. 82977 (A).

THE AMERICAN MANUFACTURING COMPANY, Plaintiff,

vs.

CITY OF ST. LOUIS, Defendant.

Plaintiff's Motion for Judgment on the First Count.

Comes now the plaintiff, by its attorneys, and (saving and reserving to plaintiff each and every exception and objection to all prior proceedings herein whereby plaintiff's claim as stated in its petition, or its rights have been denied, reduced or diminished in any respect or particular) and now moves the Court to enter judgment for plaintiff on the first count of its petition for the sum of one thousand nine hundred and nineteen dollars and seventy-si cents ($1,919.76) for the reasons following, to-wit:
80 1. Upon the record herein plaintiff is entitled to such judgment for $1,919.76 under the Constitution of the United States of America, and particularly under the section and clause thereof (Article I, Section 8) by which it is enacted, as the organic law of said United States, that Congress shall have power to regulate commerce among the several states.

2. Upon the record herein plaintiff is entitled to such judgment for $1,919.76 under the Constitution of the United States which, by the Sixth Article thereof enacts that the Constitution and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land, and the Judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

3. Upon the record herein plaintiff is entitled to such judgment for $1,919.76 under the Constitution of the United States which, by the Fourteenth Amendment thereto, enacts that no state shall make

or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

4. Upon the record herein plaintiff is entitled to such judgment for $1,919.76 under the Constitution of the United States and the parts thereof herein cited, any ordinance, law or decision by or in the State of Missouri to the contrary notwithstanding.

5. Upon the record herein plaintiff is entitled to such judgment for $1,919.76 under the Constitution of the United States,
81 which, by Section 10 of the first Article thereof, enacts that no state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.

6. Because the city ordinances in evidence, relied upon by defendant herein (as interpreted by the Supreme Court of Missouri) are in conflict with the provisions of the Constitution of the United States of America herein cited; and said ordinances are null and void, in so far as they are in such conflict.

Wherefore plaintiff prays the entry of judgment on the first count of its petition in the sum of $1,919.76.

BARCLAY & WALLACE,
Attorneys for Plaintiff."

That thereafter, during said February Term of this Court, on the 8th day of March, 1917, said Motion, having been duly submitted, was overruled by this Court, to which ruling and order overruling said Motion, plaintiff excepted at the time and said exception was allowed; and be it further remembered that during said February Term of this Court, on March 8, 1917, there were made and entered the findings and judgment herein as shown by the record proper; and that to said findings and to each of them, on and concerning said first count, and to said judgment as to said first count, plaintiff by its attorneys then and there duly excepted at the time and its exceptions were duly allowed; and be it further remembered that during said February Term of this Court, on the 10th day of
82 March, 1917, and within four days after the entry of the said last judgment herein by this Court, said plaintiff, The American Manufacturing Company, by its attorneys, duly filed herein its Motion for a New Trial as to said First Count of its said petition, which said Motion is as follows:

"CITY OF ST. LOUIS, *ss:*

In the Circuit Court, February Term, 1917, Division 1.

No. 82977 (A).

THE AMERICAN MANUFACTURING COMPANY, Plaintiff,

vs.

CITY OF ST. LOUIS, Defendant.

Plaintiff's Motion for New Trial as to the First Count.

Comes now the plaintiff, The American Manufacturing Company, by its attorneys, and moves the Court to set aside the judgment entered herein in this cause on the first count of the petition (for the sum of $1,636.35) and grant plaintiff a new trial of the cause of action therein alleged, for the reasons following, to-wit:

1. This Court erred in overruling plaintiff's motion for judgment for $1,919.76 upon said first count of its petition;

2. This Court erred in not allowing a recovery thereon by plaintiff of the item of moneys ($283.41) sued for and heretofore paid as taxes on the sales of goods manufactured in Missouri but located without said State at the time of their sale and delivery;

83 3. This Court erred in overruling plaintiff's said motion, for the following reason:

The taxation of said sales under defendant's ordinances is prohibited by and violates the Constitution of the United States, in this: that said taxation results in the imposition of an unwarranted and unlawful impost or duty on exports from this State such as is prohibited by Section 10 of the first Article of said Constitution;

4. This Court erred in overruling plaintiff's said motion, for the following reason:

The taxation of said sales is prohibited by and is in violation of the Constitution of the United States, particularly Section 8 of Article I thereof, in this: that said taxation tends unduly to regulate commerce among and between States and in practical effect results in an unwarranted and unlawful burden on said commerce;

5. This Court erred in overruling plaintiff's said motion, for the following reason:

The taxation of said sales is in substance a taxation of property not within the taxing jurisdiction of the City of St. Louis or the State of Missouri and is prohibited by and is violative of the 14th Amendment to said Constitution of the United States, in that said taxation results in depriving plaintiff of its property without due process of law and denies to plaintiff the equal protection of the laws;

6. This Court erred in overruling plaintiff's said motion, for the following reason:

Because the Constitution of the United States is the supreme law of the land and all of the Judges in every State are bound thereby,

any ordinance, law or decision by or in the State of Missouri
84 to the contrary notwithstanding; and the provisions of said Constitution should now be given effect as claimed by plaintiff;

7. This Court erred in overruling plaintiff's said motion, for each of the grounds assigned therein;

8. Because the finding for plaintiff by this Court on said first count is inadequate and insufficient for the reasons aforesaid.

Wherefore plaintiff prays that the judgment herein on said first count of the petition, for $1,636.35, be set aside and a new trial granted, for the purpose and to the end that plaintiff have and recover of defendant, in addition to said sum, the further sum of $283.41, which, as shown by the undisputed evidence in the record, is the amount of moneys exacted by defendant from plaintiff as alleged taxes on sales of goods manufactured in Missouri but located without said State at the time of their sale and delivery into other States than Missouri by plaintiff.

Each of said errors of the Court is prejudicial to the substantial rights of plaintiff upon the merits of said cause and for each thereof plaintiff prays that a new trial as to the first count of the petition may be granted to plaintiff.

BARCLAY & WALLACE,
Attorneys for Plaintiff."

That during said February Term of this Court, on the 16th day of March, 1917, said Motion of Plaintiff for a New Trial as to said first count of said petition was overruled, to which ruling and order plaintiff duly excepted at the time and its exception was duly allowed.

Be it also further remembered that upon the trial of this
85 cause in this Court during the October (1913) Term hereof, on October 20, 1913 (from the judgment in which on said day defendant City of St. Louis was allowed and prosecuted the appeal heretofore heard and determined by said Supreme Court of Missouri) certain evidence was introduced and proceedings had, which were duly incorporated in said defendant's Bill of Exceptions in this cause (duly allowed and filed in this Court April 7, 1914) which said Bill of Exceptions is as follows:

(Defendant's former Bill of Exceptions as called for by this last bill of exceptions has already been printed herein at pages 10 to 66 of this Abstract and for that reason is not here printed again.)

And now, in order that all of the foregoing matters and things may be made part of the record in this cause, said plaintiff, The American Manufacturing Company, by its attorneys, tenders this its Bill of Exceptions, and prays that the same may be allowed, signed, sealed and made a part of the record in this cause, which is accordingly done by the undersigned, Judge of said Circuit Court, as witness his signature and seal accordingly this 21st day of March, 1917.

J. HUGO GRIMM, [SEAL.]
Judge of Division 1 of the Circuit Court,
City of St. Louis, Missouri.

No objection to foregoing Bill.

CHAS. H. DAUES,
EVERETT PAUL GRIFFIN,
Of Counsel for Defendant.

Said Bill of Exceptions is duly endorsed as follows:

"Filed"
"March 21, 1917"
"NAT GOLDSTEIN, *Clerk.*"

86 *Appeal.*

On March 21, 1917, during said February (1917) Term of said Circuit Court, said plaintiff, The American Manufacturing Company, by its attorneys, filed its affidavit for an appeal to the Supreme Court of Missouri in due form, and prayed and was duly allowed an appeal to the Supreme Court of Missouri, which allowance of appeal appears in the record proper as follows (omitting caption):

"Thereupon, plaintiff files and presents to the Court an affidavit for appeal, and prays an appeal in the above entitled cause; and the Court having seen and examined said affidavit, doth order that an appeal be, and is hereby allowed the plaintiff, to the Supreme Court of the State of Missouri, from the judgment or decision of the Court heretofore rendered herein."

The appellant, The American Manufacturing Company, plaintiff below, by its attorneys, presents the foregoing as an Abstract of the Record in this cause, in accordance with the rules of this Court, and prays that the same may be accepted as such.

BARCLAY & WALLACE,
Attorneys for Appellant, The American Manufacturing Company.

St. Louis, Mo., March, 1917.

We accept the foregoing as the Abstract on the second appeal herein this 10th day of April, 1917.

CHARLES H. DAUES,
EVERETT PAUL GRIFFIN,
Of Counsel for Respondent.

87 *Index.*

Endorsed: "Filed April 12, 1917. J. D. Allen, Clerk."

88 And thereafter, on the 13th day of April, 1917, there was filed in said cause, in the office of said clerk of the Supreme Court of the State of Missouri, Appellant's Assignment of Errors, which said asignment of errors is in the words and figures following, to-wit:

89 In the Supreme Court of Missouri, October Term, 1916.

No. 20120.

THE AMERICAN MANUFACTURING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, Respondent.

Appeal from the Circuit Court, City of St. Louis.

Appellant's Assignment of Errors.

Comes now again the appellant, The American Manufacturing Company, plaintiff below, by its attorneys, and assigns further error in the record of the proceedings herein in this cause in the following particulars:

1. The Circuit Court of the City of St. Louis erred in not rendering and entering judgment for plaintiff for $1,919.76 on the first count of the petition and in entering judgment for only $1,636.35 on said count;

2. Said Court erred in not allowing a recovery on said count by plaintiff of the item of moneys ($283.41) sued for and heretofore paid as taxes on sales of goods manufactured in Missouri but located without said State at the time of their sale and delivery;

3. Said Court erred in disallowing to plaintiff a recovery of said item of moneys for the following reason:

The taxation of said sales, under the ordinances of the respondent City, is prohibited by and violates the Constitution of the United States, in this: that said taxation results in the imposition of an unwarranted and unlawful impost or duty on exports from the State of Missouri, such as is prohibited by Section 10 of the first Article of said Constitution;

4. Said Court erred in disallowing to plaintiff a recovery of said item of moneys for the following reason:

Taxation of said sales is prohibited by and is in violation of the Constitution of the United States, particularly Section 8 of Article I thereof, in this: that said taation tends unduly to regulate commerce among and between the States of the United States and in practical effect results in an unwarranted and unlawful burden on said commerce;

5. Said Court erred in disallowing to plaintiff a recovery of said item of moneys for the following reason:

Taxation of said sales is in substance and effect a taxation of property not within the taxing jurisdiction of the City of St. Louis or the State of Missouri and is prohibited by and is violative of the Fourteenth Amendment to the Constitution of the United States, in this: that said taxation results in depriving said plaintiff of its
90 property without due process of law and denies to plaintiff the equal protection of the laws;

6. Said Court erred in disallowing to plaintiff a recovery of said item of moneys for the following reason:

The Constitution of the United States is the supreme law of the land and all of the Judges in every State are bound thereby, any ordinance, law or decision by or in the State of Missouri to the contrary notwithstanding; and the provisions of said Constitution should now be given effect as claimed by plaintiff;

7. Said Court erred in overruling plaintiff's Motion for Judgment on the First Count of said Petition, for each of the reasons stated in said Motion; and said Court erred in overruling plaintiff's Motion for a New Trial as to the First Count of said Petition, for each of the reasons stated in that Motion; and

8. The Supreme Court of Missouri, on the first appeal in this cause (No. 18,184) erred in sustaining the right or power or authority of the respondent City to tax said sales and in remanding the cause on said appeal to the Circuit Court of the City of St. Louis with directions to disallow plaintiff the said item of recovery, for each of the reasons set up by plaintiff in this, the Supreme Court, at the hearing on that appeal, and now.

Each of said errors of said Circuit Court (after said remand of said cause) and each of said errors of this, the Supreme Court (in the hearing and disposition of said first appeal) is prejudicial to the sub-

stantial rights of said plaintiff, the appellant, upon the merits of this cause; and for each of same appellant prays that the judgment of said Circuit Court, on said First Count of said Petition (for only $1,636.35) be reversed, for the purpose and to the end that appellant have and recover of said respondent, in addition to said sum, the further sum of $283.41 which, as shown by the undisputed evidence in the record (Abs. p. 47) is the amount of moneys exacted from appellant by respondent as and for alleged taxes on said sales of goods manufactured in Missouri but located without this State at the time of their sale and delivery into other States than Missouri.

And appellant will ever pray, etc.

BARCLAY & WALLACE,
Attorneys for Appellant.

Endorsed: "Filed Apr. 13, 1917. J. D. Allen, Clerk."

91 And thereafter, on the 16th day of April, 1917, the following further proceedings were had and entered of record in said cause, to-wit:

No. 20120.

THE AMERICAN MANUFACTURING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, Respondent.

Come now the said parties, by their attorneys, and file their stipulation that this cause be taken as submitted, without argument, on the briefs filed in the same cause on the first appeal (No. 18,184), decided January 29, 1917.

And thereafter, on the 28th day of April, 1917, the following further proceedings were had and entered of record in said cause, to-wit:

No. 20120.

THE AMERICAN MANUFACTURING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, Respondent.

Come now the said parties, by their attorneys, and pursuant to their stipulation, it is ordered that said cause be taken as submitted on the briefs filed on the first appeal in the same case, No. 18,184.

92 And thereafter, on the 1st day of December, 1917, the following further proceedings were had and entered of record in said cause, to-wit:

THE AMERICAN MANUFACTURING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, Respondent..

Appeal from the Circuit Court, City of St. Louis.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellant its costs and charges herein expended and have therefor execution.

(Opinion filed.)

That the said opinion, so filed in said cause on the 1st day of December, 1917, is in the words and figures following, to-wit:

93 No. 20120.

THE AMERICAN MANUFACTURING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, Respondent.

Statement.

This is the second appeal of this cause to this court. The first was decided January 29th, 1917, not yet reported, and by agreement of parties the cause is again submitted on the briefs filed on the former appeal.

The rulings announced by this court on the former appeal are adhered to, and they are controlling in this, and for the reasons there stated the judgment is affirmed.

All concur.

A. M. WOODSON,
Judge.

94 In the Supreme Court of Missouri, October Term, 1917.

In Banc.

No. 20120.

THE AMERICAN MANUFACTURING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, Respondent.

Petition for Writ of Error.

To the Honorable, the Supreme Court of Missouri and to the Honorable the Chief Justice and to each of the Honorable Judges thereof:

The appellant, The American Manufacturing Company, your petitioner, deeming itself aggrieved by the judgment rendered in this Honorable Court on December 1, 1917, and by the previous proceedings herein had, in the above entitled cause, now prays for the allowance of a writ of error to the Supreme Court of the United States (for the reasons and upon the grounds set forth in its assignment of errors filed herein) and that a citation to respondent, the City of St. Louis, be duly issued and a duly anthenticated transcript of the record be returned into the Supreme Court of the United States for review and revision under the laws of the United States and the rules of that Court.

Your petitioner further prays an order as to the amount of security required herein for a stay of proceedings pending the hearing upon said writ.

And your petitioner will ever pray, etc.

THE AMERICAN MANUFACTURING COMPANY,
By S. MAYNER WALLACE,
SHEPARD BARCLAY,
Of Counsel for said Petitioner.

Allowed: upon giving approved bond in the sum of $1,000.00.

W. W. GRAVES,
Chief Justice Supreme Court of Missouri.

Filed Jan. 26, 1918. J. D. Allen, Clerk Supreme Court.

95 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of Missouri, and to said Honorable Court; Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Missouri before you, or some of you, being the highest Court of Law or Equity of the said State in which a decision could be had in the said suit between The American Manufacturing Company, appellant, and The City of St. Louis, respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the Honorable Edward D. White Chief Justice of the Supreme Court of the United States, this 26th day of January in the year of our Lord one thousand nine hundred and eighteen.

Issued at office in the City of Jefferson with the seal of the District Court of the United States for the Central Division of the Western Judicial District of Missouri, dated as aforesaid.

[Seal of the United States District Court of Missouri, Central Division, Western District.]

JOHN B. WARNER,
Clerk of Said District Court,
By H. C. GEISBERG,
Deputy.

Allowed by
W. W. GRAVES,
Chief Justice of the Supreme Court of Missouri.

[Filed Jan. 26, 1918. J. D. Allen, Clerk Supreme Court.]

96 In the Supreme Court of Missouri, October Term, 1917.

In Banc.

No. 20,120.

THE AMERICAN MANUFACTURING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, *Respondent.*

Assignment of Errors.

Now comes appellant, The American Manufacturing Company, by its counsel, in this cause, above entitled, and for Assignment of Errors herein says that in the judgment, record and proceedings herein there is manifest error to its prejudice upon the merits of said cause, in the following particulars which plaintiff in error assigns, towit:

1. The Supreme Court of Missouri erred in failing and refusing to allow a recovery by plaintiff in error of the amount of money exacted from it as taxes on sales of its goods located outside Missouri at the time of the sale and delivery thereof, because such taxation is violative of section 10, Article I, of the Constitution of the United States forbidding any State to lay any imposts or duties on exports from that State;

2. The Supreme Court of Missouri erred in failing and refusing to permit a recovery by plaintiff in error of the amount of money exacted from it as taxes on sales of goods manufactured in Missouri but located without that State, at the time of the sale and delivery thereof, because such taxation is in violation of section 8, Article I, of the Constitution of the United States which confers on Congress the power to regulate commerce among and between the several States;

3. The Supreme Court of Missouri erred in failing and refusing to permit a recovery by plaintiff in error of the money ex-
97 acted from it as taxes on sales of goods manufactured in Missouri but located without that State, at the time of the sale and the delivery thereof, because such taxation is prohibited by, and is in violation of, the 14th Amendment to the Constitution of the United States in this: that, as same is, in substance and effect, a taxation of property not within the jurisdiction of that State, said taxation results in depriving plaintiff in error of its property without due process of law and in denying to plaintiff in error the equal protection of the laws;

4. The Supreme Court of Missouri erred in failing or refusing to sustain each of the errors assigned therein in that Court by plaintiff in error, upon grounds invoking for plaintiff in error the protection of the laws of the United States, organic or statutory;

5. The Supreme Court of Missouri erred in affirming the judg-

ment of the circuit court, City of St. Louis, because of sections 8 and 10 of Article I of, and the 14th Amendment to, the Constitution of the United States, which protects plaintiff in error in rights which such affirmance fails to recognize;

6. The Supreme Court of Missouri erred in affirming the judgment of the circuit court, City of St. Louis, dis-allowing recovery by plaintiff in error of the money ($283.41) exacted as taxes on sales of goods manufactured in Missouri but located without that State, at the time of the sale and delivery thereof, because of sections 8 and 10 of Article I of, and the provisions of the 14th Amendment to, the Constitution of the United States, which protect plaintiff in error against such affirmance;

7. The Supreme Court of Missouri erred in so construing and applying the ordinance of the City of St. Louis, Missouri, as to authorize or legalize the taxation thereunder of plaintiff in error's sales of goods manufactured in said City but located outside of said City and State of Missouri, at the time of the sale and delivery thereof, because said ordinance, so construed and applied, is void as being in conflict with sections 8 and 10 of Article I of, and the 14th Amendment to, the Federal Constitution, which protect plaintiff in error against said ruling and construction thereof;

8. The Supreme Court of Missouri also erred (on the first
98 appeal of this cause from the circuit court, City of St. Louis) in sustaining the right or power or authority of the City of St. Louis, Missouri, by ordinance or otherwise, to tax plaintiff in error's sales of goods manufactured by it in said City but located outside said City and the State of Missouri, at the time of the sale and the delivery thereof, because such taxation is violative of sections 8 and 10 of Article I of, and the 14th Amendment to, the Constitution of the United States;

Wherefore, for each of said errors and for any other plain error in said record and proceedings, said plaintiff in error by its counsel prays that the judgment herein be reversed, and that such other, further and proper relief may be granted it as to the Court may seem just and appropriate upon a review thereof.

S. MAYNER WALLACE,
SHEPARD BARCLAY,
Of Counsel for said, The American Manufacturing Company.

[Filed Jan. 26, 1918. J. D. Allen, Clerk Supreme Court.]

99 The United States of America to The City of St. Louis (Missouri), Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of Missouri, wherein The American Manufacturing Company is plaintiff in error, and you are defendant in error, to show cause, if any

there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. W. Graves, Chief Justice of the Supreme Court of Missouri, this 26th day of January in the year of our Lord one thousand nine hundred and eighteen.

W. W. GRAVES,
Chief Justice of the Supreme Court of Missouri.

Service of the foregoing Citation, by receipt of a copy thereof, acknowledged this 28th day of January, 1918.

CHAS. H. DAUES AND
E. P. GRIFFIN,
Of Counsel for said The City of St. Louis, Defendant in Error.

[Endorsed:] No. 20120. Supreme Court of Missouri. The Am. Mfg. Co. vs. The City of St. Louis. Citation. Filed Jan. 29, 1918. J. D. Allen, Clerk Supreme Court.

100 (Copy.)

Know all men by these presents, That we, The American Manufacturing Company, as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto The City of St. Louis (Missouri) in the full and just sum of one thousand ($1,000.) dollars to be paid to the said City, its successors, representatives, or assigns; to which payment well and truly to be made, we bind ourselves, our representatives and assigns jointly and severally by these presents. Sealed with our seals, and dated this 26th day of January in the year of our Lord one thousand nine hundred and eighteen.

Whereas, lately at the October term, A. D. 1917, of the Supreme Court of Missouri, in a suit depending in said Court between The American Manufacturing Company, appellant, and The City of St. Louis (Missouri), respondent, judgment was rendered against the said appellant and the said appellant has obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said respondent citing and admonishing it to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the date of said Citation.

Now the Condition of the above Obligation is such, that if the said appellant (or plaintiff in error) shall prosecute said writ to effect, and answer all damages and costs if it fails to make good said writ of error, then the above obligation to be void, else to remain in full force and virtue.

THE AMERICAN MANUFACTURING COMPANY, [SEAL.]
By HENRY R. MURRAY, *Secretary.* [SEAL.]
[SEAL.] UNITED STATES FIDELITY & GUARANTY COMPANY, [SEAL.]
By E. R. NIEHAUS, [SEAL.]
Attorney in Fact.

Approved by

W. W. GRAVES,
Chief Justice Supreme Court of Missouri.

Filed Jan. 29, 1918. J. D. Allen, Clerk Supreme Court.

101 STATE OF MISSOURI, *sct:*

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in said Supreme Court in the cause entitled "The American Manufacturing Company, Appellant, vs. The City of St. Louis, Respondent," No. 20120, together with all papers filed therein, as called for by the præcipe attached to said transcript, as fully as the same remain of record and on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of Missouri. Done at office in the City of Jefferson, State aforesaid, this 31st day of January, 1918.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
Clerk of the Supreme Court
of the State of Missouri.

Endorsed on cover: File No. 26,342. Missouri Supreme Court. Term No. 365. The American Manufacturing Company, plaintiff in error, vs. The City of St. Louis. Filed February 18th, 1918. File No. 26,342.

Subject Index (Am. Mfg. Co. v. St. Louis)

(References to **Appendixes**)

are

(marked **A** and **B** respectively)

List of cases cited

Supreme Court of the United States
October Term, 1918

The American Manufacturing Company	*Plaintiff in Error*	No. 365
vs.		
The City of St. Louis		

STATEMENT FOR PLAINTIFF IN ERROR

The case at bar presents the question whether a tax levied against the plaintiff in error, a manufacturer, under an ordinance of the City of St. Louis, does not infringe upon the power vested in Congress by the Federal Constitution "to regulate commerce with foreign nations and among the several states" (Art. 1, sec. 8). The tax in question was imposed as a condition to obtaining a city license to do business. Its amount is ascertained by and apportioned to the amount of sales of goods by the manufacturer, outside as well as within the State of Missouri, namely (quoting the ordinance, Tr. p. 41, sec. 2198): a tax "of one dollar on each one thousand dollars or fractional part thereof, of sales made by" the manufacturer. To quote the learned judgment of the Supreme Court of Missouri (270 Mo. 43):

> "in this case the tax exacted for manufacturer's license was extended upon sales of goods manufactured in the city of St. Louis, and warehoused outside the State of Missouri, and sold and delivered from such warehouses to customers outside the State" (Tr. p. 44; 270 Mo. 43).

The action is to recover exactions by the City License Collector of disputed items (only one of which now remains in controversy) paid by plaintiff (under duress and protest) in order to obtain the license required of it (under heavy penalties, Tr. p. 39, sec. 2192) as a condition to continuing the business of manufacturer under the ordinance in question.

The case has been twice to the Supreme Court of Missouri. The trial court first gave judgment for plaintiff with interest, on both counts of the petition, following an earlier ruling of the Supreme Court (238 Mo. 279). The city appealed. The judgment was reversed by an opinion (Tr. pp. 44-47) reported, 270 Mo. 40, which, while it affirmed the findings for plaintiff on the second count and for part of the first count, vacated all the findings as to interest, and (discarding the ruling of the Supreme Court on a former appeal between the same parties, 238 Mo. 279) held the license tax (claimed in the first count) for $283.41 (being the license based upon sales made in and into other states from plaintiff's property warehoused in other states than Missouri) under ordinance section 2198 (later quoted) to be valid, despite the objection and protest of plaintiff that it was an unconstitutional requirement under the commerce clause of the Federal Constitution.

The Later Procedure

Upon remand to the circuit court, the latter entered judgment for plaintiff on all the items claimed, except the one rejected by the Missouri Supreme Court ($283.41) as part of the first count, as to which re-

covery was denied (Tr. pp. 47-8) and a lesser amount ($1,636.35) was adjudged due to plaintiff, while plaintiff's **motion for judgment** for the full amount claimed in the first count ($1919.76) based on the constitutional grounds now presented (Tr. pp. 51-52) was overruled, and exceptions duly taken and allowed (Tr. pp. 52-3). Plaintiff's appeal to the Supreme Court thereon was allowed, and in the latter Court the second judgment was *affirmed* in a brief opinion (Tr. p. 57) adhering to the rulings on the first appeal. This writ of error was then sued out, upon assignments of error presenting the constitutional objections now urged to the enforcement of the license tax as an imposition on interstate commerce, and an infringement of plaintiff's rights under the Fourteenth Amendment.

The Ordinance in Question

The City ordinances (Tr. pp. 37-43) under which the tax in question was imposed will be printed in full herewith as **Appendix A,** in order that the text and context of the local legislation may be readily understood. The gist of it is found in the provision that in addition to the "*ad valorem* tax of one-fifth of one per centum on the value of all such goods, wares and merchandise, situated within the limits of the City", a license shall also be paid every year

> "of one dollar on each one thousand dollars or fractional part thereof of sales made by such merchant, mercantile firm or corporation" (Tr. p. 41, sec. 2198)

Another section (Tr. p. 37, sec. 2185) enacts that

every manufacturer shall procure annually a license for which there shall be paid the same rate as merchants are required to pay for a license, and the same *ad valorem* tax on raw materials, etc. (Tr. p. 38, sec. 2187).

There is also a state statute imposing a tax on manufacturers, which will be printed herewith as **Appendix B**, for the information of the Court, as the learned opinion of the Supreme Court refers (Tr. p. 46) to it (R. S., Mo., sec. 11,647, **Appendix B.**, p. B 2), and quotes briefly therefrom (270 Mo. 45).

The Facts

are not in dispute. The plaintiff in error is a foreign corporation engaged in the manufacture and sale of bagging, and duly authorized to do business in Missouri. The one item of license tax which remains in controversy under the first count of the petition is that of one dollar per thousand dollars on the sales of the goods manufactured by plaintiff in St. Louis, and later sold from warehouses outside of Missouri to states other than Missouri. The defendant introduced in evidence at the trial (Tr. p. 31) plaintiff's statement of tax returns (which is required by the ordinance (Tr. pp. 37-9, secs. 2186-92). The part of which return relating to the point in suit is as follows (Tr. p. 31):

	Value	Taxes
"4. Sales made through St. Louis office and filled from stock made in St. Louis, but shipped from points other than St. Louis to States other than Missouri.....	$283,405.00	$283.41"

Class 4 of those sales is shown by the evidence (without contraction) to have been made, as described by the Supreme Court of Missouri (270 Mo. 43) as "sales of goods manufactured in the city of St. Louis, and warehoused outside the State of Missouri, and sold and delivered from such warehouses to customers outside the State".

The last affirmance by the Supreme Court (270 Mo. 40) of the city license tax levy upon the proceeds of those sales of plaintiff's goods, made in other states, to an amount of tax proportioned to the amount of the gross receipts of those sales, raises the

Question now involved

which is, whether a state, or its Municipality by ordinance, may levy a tax of one dollar on each thousand dollars of sales made by a manufacturer of goods manufactured within its limits but located (or "warehoused") in other states at the time of sale and of delivery into other states than Missouri, in the course of its business?

Specifications of Error

Plaintiff in error by its counsel assigns and specifies error in the record and proceedings herein in the following particulars, to wit:

1. The Supreme Court of Missouri erred in affirming the judgment of the circuit court;
2. The Supreme Court of Missouri erred in overruling the first assignment of error of plaintiff in error therein, in that the Circuit Court of the City of St. Louis erred in not rendering and

entering judgment for plaintiff for $1,919.76 on the first count of the petition and in entering judgment for only $1,636.35 on said count;

3. The Supreme Court of Missouri erred in overruling the second assignment of error of plaintiff in error therein in that the said Court erred in not allowing a recovery on the first count by plaintiff of the item of moneys ($283.41) sued for and heretofore paid as taxes on sales of goods manufactured in Missouri but located without said State at the time of their sale and delivery;

4. The Supreme Court of Missouri erred in overruling the fourth assignment of error of plaintiff in error therein, in that the said Court erred in disallowing to plaintiff a recovery of said item of moneys for the reason that taxation of said sales is prohibited by and is in violation of the Constitution of the United States, particularly Section 8 of Article I thereof, in this; that said taxation tends unduly to regulate commerce among and between the States of the United States, and in practical effect results in an unwarranted and unlawful burden on such commerce;

5. The Supreme Court of Missouri erred in overruling the fifth assignment of error of plaintiff in error therein, in that said Court erred in disallowing to plaintiff a recovery of said item of moneys for the reason that taxation of said sales is in substance and effect a taxation of property not within the taxing jurisdiction of the City of St. Louis or the State of Missouri, and is prohibited by and is violative of the Fourteenth Amendment to the Constitution of the United States, in this: that said taxation results in depriving said plaintiff of its property without due process of law and denies to plaintiff the equal protection of the laws;

6. The Supreme Court of Missouri erred in overruling the seventh assignment of error of plaintiff in error therein, in that said Court erred in overruling plaintiff's Motion for Judgment on the First Count of said Petition, for each of the reasons stated in said Motion; and said Court erred in overruling plaintiff's Motion for a New Trial as to the First Count of said Petition, for each of the reasons stated in that Motion;

7. The Supreme Court of Missouri erred in so construing and applying the ordinance of the City of St. Louis, Missouri, as to authorize or legalize the taxation thereunder of plaintiff in error's sales of goods manufactured in said City but located outside of said City and State of Missouri, at the time of the sale and delivery thereof, because said ordinance, so construed and applied, is void as being in conflict with Section 8 of Article I of, and the Fourteenth Amendment to the Federal Constitution, which protect plaintiff in error against said ruling and construction of said ordinance.

Wherefore, plaintiff in error prays that, for each of said errors or for any other plain error in said record and proceedings in said cause, the judgment of said Supreme Court of Missouri against said plaintiff in error be reversed, and such other, further and proper relief be granted to plaintiff in error as may be just and according to law.

S. Mayner Wallace
Shepard Barclay
Attorneys and of Counsel for
Plaintiff in Error

St. Louis, April, 1919

Brief of the Argument for Plaintiff

All the claims of plaintiff, under the two counts of its petition, to recover the exactions of the city license collector (which he enforced by threats and duress) were allowed by the Supreme Court except the item of $283.41, part of the claim in the first count, which is the tax of one dollar on each one thousand dollars of proceeds of sales made by plaintiff of its goods, warehoused in other States, and delivered thence to States other than Missouri.

The Supreme Court of Missouri at a prior time (Dec. 16, 1911) in an action between the same parties had held that the "fair and reasonable construction of defendant's ordinance is that it was only intended to cover sales actually completed; and shipments made from defendant city."

American Mfg. Co. v. St. Louis, 238 Mo. 27J

Following that ruling, the circuit court in the case at bar held, at the first trial, that plaintiff was entitled to recover the amount of license tax extorted (by duress and under protest) on account of the sales now in question; but the Supreme Court, on the first appeal in this case, declined to follow the prior ruling (238 Mo. 279) and held the ordinance applicable to sales of goods made from warehouses in other States and delivered into other States than Missouri. We quote here the ruling for convenient reference:

> "We hold that the tax in question is a tax upon the privilege of pursuing the business of manufacturing these goods in the City of St. Louis; that when the goods were manufactured the obli-

> gation accrued to pay the amount of the tax represented by their production when it should be liquidated by their sale by the manufacturer; that their removal from the City of St. Louis and storage elsewhere, whether within or without the state worked no change in this obligation; that their sale by the respondent wherever they may have been stored at the time, whether it was done through its home office in New York or the office of its factory in St. Louis, should have been reported in its return to the license collector of the City of St. Louis and the amount included in fixing the amount payable on account of its license tax" (Tr. p. 46).
>
> American Mfg. Co. v. St. Louis, 270 Mo. 46

With all due respect, we venture to suggest that the tax levy in question appears rather to be what the ordinance itself declares: a burden (whatever its name) "of one dollar on each one thousand dollars or fractional part thereof, **of sales** made" (Tr. pp. 38, 41, sec. 2198; **Appendix A**, p. A 9, sec. 2198).

This Court has often said in effect, and we quote a recent expression of the ruling, that

> "The question whether a state law deprives a party of rights secured by the Federal Constitution depends not upon how it is characterized, but upon its practical operation and effect."
>
> Timber Co. v. Washington, 243 U. S. 237

The burden in this case, imposed on sales in other States, is called a "*license*", but the name is not material. The charge or tax is upon the proceeds of the sales of plaintiff's goods in States "other than Mis-

souri". The city tax is levied in proportion to the amount of the sales, by which is meant the amount of the gross proceeds of or receipts from those sales, as the process prescribed for the tax return of sales by the manufacturer shows (Tr. p. 37, sec. 2186; **Appendix A**, p. A 2, sec. 2186) as well as the section prescribing the tax, which is as follows (applicable to merchants and manufacturers alike, Tr. p. 37, sec. 2185):

> "Sec. 2198. **Ad valorem and additional tax—rate—time of payment.**—There shall be levied and collected on the value of the largest amount of all goods, wares and merchandise stated as aforesaid an ad valorem tax of one-fifth of one per centum on the value of all such goods, wares and merchandise, situated within the limits of the city, for municipal purposes. This tax shall be paid to license collector on or before the first Monday of July in each year, together with a license which shall be paid every year by the merchant, mercantile firm or corporation (in addition to the per centum hereinbefore stated) of one dollar on each one thousand dollars or fractional part thereof, of sales made by such merchant, mercantile firm or corporation, provided that no license shall be issued under the provisions of this article for a less sum than five dollars, which sum shall be paid by each merchant, mercantile firm or corporation doing a business of five thousand dollars or less per annum."

The operation of such a tax has been lately described as laying "a direct burden upon every transaction by withholding for the use of the State a part of every dollar received".

U. S. Glue Co. v. Oak Creek, 247 U. S. 328

Every thousand dollars (or fractional part thereof) of proceeds of sales made by this plaintiff in other States, from its stock "warehoused" there, and delivered to vendees in other States than Missouri, must contribute its percentage of this license tax to St. Louis, if the goods so sold were originally manufactured in St. Louis! ! !

This ordinance might have been construed to apply to sales made and executed within Missouri, but as interpreted in the learned opinion of the Missouri Supreme Court, upon the facts of the case at bar, it infringes upon the power vested in and reserved to Congress by the Constitution to regulate commerce among the several States. The burden laid by this ordinance upon the interstate commerce conducted by plaintiff as described in this record, and in the learned opinion of the Supreme Court of Missouri, is measured by the amount of the proceeds of the interstate sales on which the burden is placed. It resembles closely in principle a tax upon gross receipts of which it has recently been said:

> "A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise."
>
> U. S. Glue Co. v. Oak Creek, 247 U. S. 329

The license tax in the case at bar is nothing but a tax on the "*sales*", and in effect upon the goods sold, in interstate commerce. As such it is an attempt to regulate interstate commerce, despite the federal organic enactment reserving that power to Congress.

Sales of goods form the primary and elemental form of commerce. A tax on sales, in proportion to

the amount of proceeds, is a tax or burden on commerce. If the State has power to impose such a tax as this case exhibits, it would have power to impose one large enough to destroy the entire profit of the sale, and thus suppress the commerce itself. Where the transaction is interstate in nature, we respectfully submit that it is not within the power of any State so to regulate or to destroy it, without the concurrence of Congress.

The principle of constitutional law on which we rely has been lately so fully expounded that it seems to invite no further vindication.

Crew Levick Co. v. Pennsylvania, 245 U. S. 292

That case deals with export sales; but the rule as to foreign and interstate transactions is held (p. 296) to be identical in principle. Other decisions cast some more light in the same direction.

Brown v. Maryland, 12 Wheat. 419
State tax case, 15 Wall. 232
Cook v. Penn. 97 U. S. 566
Galveston Ry. Co. v. Texas, 210 U. S. 217
Robbins v. Shelby, 120 U. S. 489
Brennan v. Titusville, 153 U. S. 289
Sault Ste. Marie v. Transit Co., 234 U. S. 333
Looney v. Crane Co., 245 U. S. 178
International Paper Co. v. Mass. 246 U. S. 135
Locomobile Co. v. Mass. 246 U. S. 146
Glue Co. v. Oak Creek, 247 U. S. 328

II

The tax in question infringes plaintiff's rights under the 14th Amendment, in depriving it of its property without due process of law and denying it the equal protection of the laws.

The effect of the tax we challenge is to impose a burden on plaintiff's property outside Missouri, and over which that State has no jurisdiction to impose a tax on sales in the circumstances described. The attempt to do so violates the 14th amendment in the particulars cited.

Looney v. Crane Co. 245 U. S. 178

While the learned opinion (Tr. 44) under review characterizes this tax as a privilege or occupation tax, yet, if the effect of its actual operation is as plaintiff claims, it is not for that reason a valid exercise of the taxing power, as is shown by several of the decisions already cited.

What really is sought to be taxed by this ordinance is the right to sell outside the State. And a tax is not "an occupation tax except as it is imposed upon the very carrying on of the business" in question, to use the phrase of Mr. Justice PITNEY in the *Crew Levick* case, above (p. 297).

The suggestion in the learned opinion of the Missouri Supreme Court (Tr. 46) to the effect that the manufacturer might escape this particular tax altogether by storing his goods outside the State for that purpose omits, we respectfully submit, to take into account the practical necessities of trade, and overstates the likelihood or probabilities of such a course.

But there is nothing in the record, with all due respect, to sustain such suggestion, even if it be taken as an argument in support of this tax. It certainly does not answer the constitutional objections which plaintiff lodges against the tax.

Commercial necessity, and that alone, as the record shows, furnished the reason why the goods, upon sales of which the tax in question was imposed, were stored in different places in other States prior to the sale thereof (Tr. 25, 26, 27). The record contains no ground or basis for suspicion that plaintiff attempted any evasion of taxes. And, of course, there is no contention against the validity of the tax as applied to intra-state sales or commerce.

In view of the recent cases in which this subject has been considered by your Honors, it does not seem needful to prolong the argument at this time. Plaintiff in error has drawn in question the validity of the authority of the ordinance quoted, imposed under the laws of the State of Missouri, on the ground of its repugnancy to the Constitution of the United States, and the decision below has been in favor of the validity of that authority, which we respectfully deny. The case is obviously one for the interposition of this high Court, the last expositor of constitutional rights. Plaintiff in error relies upon each of its *Specifications of Error;* and respectfully prays that the judgment under review be reversed, and such further orders be made as may seem just and proper.

S. Mayner Wallace
Shepard Barclay
Attorneys and of Counsel for Plaintiff in Error

St. Louis, Mo., April, 1919

APPENDIX A

Supreme Court of the United States

The American Manufacturing Company, *Plaintiff in Error*	Folio No. 26,342
vs.	
The City of St. Louis	

APPENDIX A

For convenience of the Court we reprint the sections of the **City ordinance** relating to the license tax on **manufacturers** (offered in evidence by defendant, Tr. pp. 37-43):

Articles X and XI, Chapter 31, of the Revised Code of St. Louis, 1907.

ARTICLE X.

Manufacturers.

Section 2184. **Manufacturer defined.**—Every person, firm or corporation, who shall hold or purchase personal property for the purpose of adding to the value thereof, by any process of manufacturing, refining, or by the combination of different materials, or shall purchase and sell manufactured articles such as [he manufactures] or uses in manufacturing, shall be held to be a manufacturer for the purpose of this article, except as is or may be otherwise provided by ordinance.

Sec. 2185. **License required—amount, etc.**—Every person defined to be a manufacturer by the preceding section shall, before doing or offering to do business as such, procure from the license collector a license therefor, under the provisions of this article, for which there shall be paid the same rate as merchants are required to pay for a license; provided, in collecting license on the sales of tobacco of any kind, on high-wines and on beer, the manufacturer shall be permitted to deduct the amount of tax paid the United States from the total sales made by him or them, and if he shall, within the City of St. Louis, do or offer to do any manufacturing business without first complying with the provisions of this article, or shall otherwise violate or fail to comply with any of the provisions of this article, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense. No license shall be assignable or transferable.

Sec. 2186. **Statement of manufacturer required—license, when paid—publication.**—The license collector or his deputies shall, after the first Monday of March and before the first Monday in June of each year, call on each and every person defined by this article to be a manufacturer, and notify him to furnish, and it shall be the duty of such person, whether so notified or not, to furnish said license collector: First, a statement of the value of the greatest aggregate amount of raw materials, merchandise and finished products (to be listed separately) which he had on hand between the first Monday of March and the first Monday in June in each year on any one day between said times,

as well as all tools, machinery and appliances used in conducting his business or owned by him on the first day in June of each year; second, a statement of the aggregate amount of all sales made by him during the year next preceding the first Monday of June, which statement shall be made in writing and delivered to the license collector, verified by the affidavit of the manufacturer, or officer of the corporation making it, if residing in the city; if not, then by some credible person authorized to do so, and the amount of tax and license due thereon shall be paid to the license collector, at his office, on or before the first Monday of July in each year. It shall be the duty of the license collector, when so directed by the comptroller, to give notice by publication in the papers doing the city printing of any of the provisions or requirements of this article.

Sec. 2187. **Ad valorem tax to be levied.**—In addition to the license hereinbefore provided for, there shall be levied and collected on the value of the raw materials, merchandise and finished products, tools and machinery and appliances contained in the statement as aforesaid, an annual ad valorem city tax at the same rate as is required by ordinance for the taxing of merchants, within the several districts of the city, which tax and license hereinbefore mentioned shall be paid to the license collector, on or before the first Monday of July in each and every year.

Sec. 2188. **Form of license.**—It shall be the duty of the comptroller to furnish the license collector with blank licenses, which license shall be charged to the license collector, and his receipt taken therefor. Said

license shall be in the following form: No.—— manufacturers' city license. The city of St. Louis: To all who shall see these presents, greeting: Know ye that —— having paid ——, license collector of the city of St. Louis, the sum of —— dollars, being the license tax upon —— as manufacturer; therefore, the said —— is hereby authorized to manufacture the following articles, viz.: —— except as otherwise provided by ordinance, at any one place of business within the city for the year ending on the first Monday of July, 19——, and to sell and dispose of such articles so manufactured at the same place, or any other one place in the city. In testimony whereof, I ——, comptroller of the city of St. Louis, have hereunto set my hand this —— day of ——, 19——, —— comptroller. Attest: ——, register. Tax ——, license ——, delivered this —— day of ——, 19——, ——, license collector.

Sec. 2189. **Licenses issued—to compare with stubs of blanks.**—The blank licenses provided for in the next preceding section shall be bound in book form with suitable margins or stubs, on which shall be made and entered the sworn statements required by this article. There shall also be entered upon the margins or stubs the amount of tax and license collected in accordance with the statement so made; said margins or stubs shall be returned with the license collector's statement of the items and aggregate amount collected to the comptroller, who shall examine and compare the same and charge the aggregate amount collected to the license collector.

Sec. 2190. **Bond.**—When any manufacturer, manufacturing firm or corporation shall commence the business of manufacturing in the city of St. Louis, after

the first Monday in July in any year, he or they shall take out a manufacturers' license therefor, but before any such license shall be issued to him or them, he or they shall execute a bond to the city, with two or more sufficient securities, who shall be freeholders at the time, or deposit with the license collector bonds of the city of St. Louis or other securities of equal value, conditioned that he or they will after the first Monday of June next succeeding and before the first Monday of July thereafter, furnish to the license collector, first, a statement, verified as therein required, of the value of the greatest aggregate amount of raw materials, merchandise and finished products (to be listed separately), which he had on hand between the first Monday of March and the first Monday of June or any one day between said times, as well as all tools, machinery and appliances used in conducting his or their business, or owned by him or them on the first day of June; second, a statement, verified as herein required, of the aggregate amount of all sales made by them during the year or part of year from the time he or they commenced business to the first Monday of June next succeeding, and that he or they will pay to the license collector the ad valorem tax and license due upon the amounts of such statements, which bond or securities shall be in such sum as the license collector may deem sufficient to protect the city's interests, and shall be approved by the license collector and his approval indorsed thereon, and upon which statement there shall be paid the same rate of taxes and license as other manufacturers pay; but the amount of ad valorem tax demanded shall be such a fraction of the full annual tax as the time from the day on which business was commenced to the first Monday of July, next succeed-

ing, bears to one year; and every such manufacturer, manufacturing firm or corporation who shall fail or neglect to perform and fulfill the conditions of the bond executed by him or them, as herein provided, shall be deemed to have forfeited said bond, and in that event it shall be the duty of the comptroller to cause suit to be instituted thereon against the principal and all sureties of such bond, in the court having jurisdiction, or make sale of the securities deposited with him instead of a bond at public sale after having given ten days' notice thereof in the newspaper doing the city printing.

Sec. 2191. **Account sales open to license collector.**—It shall be the duty of each manufacturer, manufacturing firm or corporation to keep in a proper book and entered in ink an account of all sales made by him or them, which accounts shall always be open to the inspection of the license collector, to verify the returns made to him. The statements or returns made to the license collector under the requirements of this article shall not be made public, nor shall they be subject to the inspection of the municipal assembly.

Sec. 2192. **Penalty for failure to make statement.**—In case any manufacturer, manufacturing firm or corporation shall fail, neglect or refuse to deliver the statements herein required, or pay the license and tax levied by this article on or before the first Monday in July of each year, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined as provided in section 2165, and in addition thereto the license collector shall assess the raw materials, merchandise, finished product, tools, machinery and appliances, and aggregate amount of all sales

of such manufacturer, manufacturing firm or corporation, at double their value, to be ascertained from the best information he can obtain, and he shall report the delinquent to the city attorney.

Sec. 2193. **Penalty for making false statement.**—Whoever shall make or file with the license collector under the provisions of this article, a false statement under oath, shall, on conviction thereof, forfeit his license and pay a fine of not exceeding five hundred dollars. And it shall be the duty of the license collector to carefully examine all statements filed with him, and to prosecute all violations of this article, according to law; provided, that before instituting any such prosecution, he shall give the manufacturer an opportunity of explaining his statement and of correcting it, if inadvertently made. And if it shall appear to the license collector that such false statement was willfully and corruptly made, he shall report all the facts to the grand jury.

ARTICLE XI.

Merchants.

Section 2194. **Merchant—term defined.**—Whoever shall deal in the selling of any goods, wares or merchandise at any store, stand or place occupied for that purpose within the city, or at the Merchants' Exchange, is hereby declared to be a merchant, except as is or may be otherwise provided by ordinance.

Sec. 2195. **License required.**—Every person defined to be a merchant by the preceding section shall, before doing or offering to do the business as such, procure from the license collector a license therefor,

under the provisions of this article, and if he shall, within the city of St. Louis, sell or offer for sale any goods, wares or merchandise, without first complying with the provisions of this article, or shall otherwise violate or fail to comply with any of the provisions of this article, he shall be deemed guilty of a misdemeanor, and on conviction thereof, be fined not less than twenty-five dollars nor more than five hundred dollars for each offense.

Sec. 2196. **License can not be assigned.**—No license shall be assignable or transferable.

Sec. 2197. **Statement of merchants.**—The license collector or his deputies shall, after the first Monday in March and before the first Monday of June in each year, call on each and every person defined by this article to be a merchant, and notify him to furnish, and it shall be the duty of such person whether so notified or not to furnish, said license collector: First, a statement of the value of the largest amount of all goods, wares and merchandise which he may have had in his possession or under his control at any time between the first Monday of March and the first Monday of June in each year; second, a statement of the aggregate amount of all sales made by him during the year next preceding the first Monday of June, which statement shall be made in writing and delivered to the license collector, verified by the affidavit of the merchant or officer of the corporation making it if residing in the city; if not, then by some credible person duly authorized to do so, and the amount of the tax and license due thereon shall be paid to said collector at his office on or before the first Monday of July in each year. It shall be the duty of the license

collector, when so directed by the comptroller, to give notice by publication in the papers doing the city printing of any of the provisions or requirements of this article.

Sec. 2198. **Ad valorem and additional tax—rate—time of payment.**—There shall be levied and collected on the value of the largest amount of all goods, wares and merchandise stated as aforesaid an ad valorem tax of one-fifth of one per centum on the value of all such goods, wares and merchandise, situated within the limits of the city, for municipal purposes. This tax shall be paid to license collector on or before the first Monday of July in each year, together with a license which shall be paid every year by the merchant, mercantile firm or corporation (in addition to the per centum hereinbefore stated) of one dollar on each one thousand dollars or fractional part thereof, of sales made by such merchant, mercantile firm or corporation, provided that no license shall be issued under the provisions of this article for a less sum than five dollars, which sum shall be paid by each merchant, mercantile firm or corporation doing a business of five thousand dollars or less per annum.

Sec. 2199. **Form of license.**—It shall be the duty of the comptroller to furnish the license collector with all blank licenses, which licenses shall be charged to the license collector and his receipt taken therefor. Said licenses shall be in the following form: Merchant's city license, No. ——. The City of St. Louis: To all who shall see these presents, greeting: Know ye that —— having paid to ——, license collector of the City of St. Louis, the sum of —— dollars, being the tax and license upon —— as a merchant, there-

fore the said —— is hereby authorized to sell any goods, wares and merchandise of any description, except as otherwise provided by ordinance at any one store, stand or place of business within the city, or at the Merchants' Exchange, for the year ending on the first Monday of July, 19——. In testimony whereof, I, ——, comptroller of the City of St. Louis, have hereunto set my hand this —— day of ——, 19——. ——, comptroller. Attest: ——, register. Tax, ——; license, ——. Delivered this —— day of ——, 19——, ——, license collector.

Sec. 2200. **Licenses issued to correspond with stubs.**—The blank licenses provided for in the next preceding section shall be bound in book form, with suitable margins or stubs, on which shall be made and entered the sworn statements required by this article. There shall also be entered upon the margins or stubs the amount of tax or license collected in accordance with the statements so made; said margins or stubs shall be returned, with the license collector's statements of the items and aggregate amount collected, to the comptroller, who shall examine and compare the same, and charge the aggregate amount collected to said collector.

Sec. 2201. **Bond.**—When any merchant, mercantile firm or corporation shall commence business in the city of St. Louis, after the first Monday in July, in any year, he or they shall take out a merchant's license therefor, but before any such license shall be issued to him or them, he or they shall execute a bond to the city, with two or more sufficient securities, who shall be freeholders at the time, or deposit with the license collector bonds of the City of St. Louis or

other securities of equal value, conditioned that he or they will, on or before the first Monday of July next following, furnish to the license collector, first a statement verified as required by this article, of the value of the largest amount of all goods, wares and merchandise he or they had on hand or subject to their control at any time between the first Monday of March and the first Monday of June next succeeding; second, a statement, verified as required by this article, of the aggregate amount of all sales made by them between the date upon which he or they commenced business and the first Monday of June next succeeding, and that he or they will pay to said collector the ad valorem tax and license due according to the provisions of this article, which bond or securities shall be in such sums as the license collector may deem sufficient to protect the city's interest, and shall be approved by him and his approval indorsed thereon. Upon such statements there shall be paid the same rate of taxes and license as other merchants pay, but the amount of ad valorem tax demanded shall be such a fraction of the full annual tax as the time from the day on which the business was commenced to the first Monday of July next succeeding bears to one year, and every such merchant, mercantile firm or corporation who shall fail or neglect to perform or fulfill the conditions of the bond executed by him or them as herein provided, shall be deemed to have forfeited said bond, and in that event it shall be the duty of the comptroller to cause suit to be instituted thereon against the principals and all such securities of such bond in the court having competent jurisdiction, or make sale of the securities deposited with him instead of a bond,

at public sale, after having given ten days' notice thereof in the newspapers doing the city printing.

Sec. 2202. **Account sales to be open to inspection.**—It shall be the duty of each merchant, mercantile firm or corporation to keep a proper book, and enter in ink, an account of all sales made by him or them, which account shall always be open to the inspection of the license collector to verify the returns made to him. The statements or returns made to the license collector under the requirements of this article shall not be made public, nor shall they be subject to the inspection of any person except the mayor, comptroller and members of the municipal assembly.

Sec. 2203. **Penalty for failure to make statement or pay license.**—In case any person, mercantile firm or corporation shall fail, neglect or refuse to deliver the statement herein required and pay the tax and license levied by this article on or before the first Monday of July in each year, he or they shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined as provided for in section 2176, and in addition thereto the license collector shall assess the goods, wares, merchandise and aggregate amount of sales of such merchant, firm or corporation at double their value, to be ascertained by the best information he can obtain, and he shall also report the delinquent to the city attorney.

Sec. 2204. **Penalty for making false statement.**—Whoever shall make or file with the license collector, under the provisions of this article, a false statement under oath, shall, on conviction thereof, forfeit his license and pay a fine not exceeding five hundred dollars; and it shall be the duty of the license collector to carefully examine all statements filed with him and

to prosecute all violations of this article according to law; provided, that before instituting any such prosecution he shall give the merchant an opportunity of explaining the statement and correcting it if inadvertently made; and if it shall appear to the license collector that such false statement was willfully and corruptly made, he shall report all the facts to the grand jury.

APPENDIX B

Supreme Court of the United States

The American Manufacturing Company
Plaintiff in Error
vs.
The City of St. Louis
} Folio No. 26,342

APPENDIX B

Missouri statutes imposing state tax on manufacturers (but not relating to the particular tax involved in the present action):

(Rev. Stats. Mo., 1909, pp. 3617-8, secs. 11646-49)

Article XVI

TAXATION OF MANUFACTURERS

Sec. 11646. Manufacturers to be taxed.—All manufacturers in this state shall be licensed and taxed on all raw material and finished products, as well as all the tools, machinery and appliances used by them, in the same manner as is or may be provided by law for the taxing and licensing of merchants; and no county, city, town, township, or municipal authority thereof, shall ever levy any greater amount of tax against any

manufacturer than is levied against merchants for the same period: *Provided,* that manufacturers shall file, separately, their sworn statement of the greatest aggregate amount of raw material and finished products which they may have had on hand between the first Monday in March and the first Monday in June, of the then current year, on any one day between said times, as well as the tools, machinery and appliances used in conducting their business or owned by them on the first day of June of each year: *Provided further,* that nothing in this article be so construed as to apply to manufacturers whose raw material, finished products, tools, machinery and appliances, in the aggregate amount, be less than one thousand dollars. Licenses issued under this article shall be for one year, ending on the first day of June of the then current year, and no other or greater amount of tax of any kind, whether state or local, shall be assessed, levied on collected by the state, or any county or municipality, on such raw material, finished products, tools, machinery and appliances, than is levied for the same year upon merchandise, under the law regulating merchants' licenses. (R. S. 1899, §8486.)

Sec. 11647. "Manufacturer" defined.—Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials, shall be held to be a manufacturer for the purposes of the foregoing section. (R. S. 1899, §8487.)

Sec. 11648. Duties of certain officers in cities with over 100,000 inhabitants.—In all cities now having or

which may hereafter have a population of one hundred thousand or more, the license commissioner, collector, or other officer authorized to take, file and receive the sworn statements and returns of all manufacturers as to their properties for taxation, shall annually, under oath, on the first Monday of August of each year, forward to the state board of equalization and to the governor, a full and true statement to each, showing the names of such manufacturers alphabetically arranged and opposite each name, such officer, shall in a separate column give the total valuation of all raw material, finished products, tools, machinery and appliances, and other property as returned for taxation by the manufacturers of such cities. (R. S. 1899, §8488.)

Sec. 11649. Penalty.—Any license commissioner, collector or other officer mentioned in the preceding section of this article, who shall fail or refuse to make annual statements to the state board of equalization, as provided in the preceding section of this article, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. (R. S. 1899, §8489.)

SUBJECT INDEX.

LIST OF CASES CITED.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

THE AMERICAN MANUFACTURING COMPANY,
Plaintiff in Error

vs

THE CITY OF ST. LOUIS,
Defendant in Error

No. 365

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI

Statement, Brief and Argument for Defendant in Error

STATEMENT

There is but one question in this case and as it is fairly stated in the brief of plaintiff in error we adopt that statement as our own.

POINTS AND AUTHORITIES

I.

The license tax of one dollar per thousand upon sales levied by the ordinances of the city is an occupation tax, and not a tax upon property. In this respect it is distinguishable from the ad valorem taxes.

American Union Express Co. v. St. Joseph, 66 Mo. 675-681;
Clark v. Titusville, 184 U. S. 329, *l. c.* 333-4;
Society for Savings v. Coite, 73 U. S. 594, *l. c.* 608-9;
Maine v. Grand Trunk Ry. Co., 140 U. S. 217, *l. c.* 227-8;
Home Insurance Co. v. New York State, 134 U. S. 594, 600;
Aurora v. McGannon, 138 Mo. 38, 48;
St. Louis v. United Railways Co., 210 U. S. 255, 279;
St. Louis v. United Railways Co., 263 Mo. 387, *l. c.* 441;
State ex rel. American Mfg. Co. v. Alt, 224 Mo. 493;
Jarman v. School District, 264 Mo. 646, *l. c.* 654.

II.

The occupation tax levied upon sales is a tax upon the privilege of manufacture. It is a manufacturer's license and not a merchant's license. The amount of the tax is graduated by the amount of sales, but is in no sense a tax upon sales nor a tax upon the goods sold. The city may collect an ad valorem tax upon

property used in a business and at the same time impose a license tax upon the pursuit of that business.

St. Louis v. Ernst, 95 Mo., *l. c.* 367;
St. Louis v. Green, 70 Mo. 562;
State ex rel. v. Tracy, 94 Mo. 217;
Brookfield v. Tooey, 141 Mo. 619, *l. c.* 625;
And cases cited under Point I, *supra.*

III.

A license tax levied upon a manufacturer and graduated in accordance with the amount of sales made by such manufacturer should include a tax on account of all sales of goods manufactured, even though such goods are destined for interstate commerce or have been shipped into other states and there warehoused pending sale. A State may tax all occupations and all business carried on within its borders, and all privileges and franchises derived from the State. Such a tax is not a tax upon interstate commerce, though the amount is arrived at by considering the sale of products which are destined for such commerce.

United States v. Stowell, 133 U. S. 10, *l. c.* 16;
Coe v. Errol, 116 U. S. 517, *l. c.* 524;
Pullman Car Co. v. Pennsylvania, 141 U. S. 18;
Gloster Ferry Co. v. Pennsylvania, 114 U. S. 196, *l. c.* 206-211;
Western Union Tel. Co. v. Attorney General of Massachusetts, 125 U. S. 530, *l. c.* 549;
Railroad v. Knight, 192 U. S. 21;
Diamond Match Co. v. Ontonagon, 188 U. S. 82;
Hopkins v. United States, 171 U. S. 578;
Galveston Ry. Co. v. Texas, 210 U. S. 225;
Ficklin v. Shelby County, 145 U. S. 1;
Hatch v. Reardon, 204 U. S. 152, *l. c.* 158-9, 161-2;

State v. Brodnax & Essex, 228 Mo. 25, *l. c.* 49-53. S. C. reported as Brodnax v. Missouri, 219 U. S. 285;
American Manufacturing Co. v. St. Louis, 238 Mo. 267, *l. c.* 277-8;
State v. Applegarth, 28 L. R. A. 812, *l. c.* 816.

IV.

The taxes considered in the third paragraph of the opinion in the case of American Manufacturing Co. vs. St. Louis, 238 Mo. 267, *l. c.* 278, were on account of sales of products manufactured at a factory in New York. Such sales should be clearly distinguished from the sales in controversy here, which were of the products of the St. Louis factory.

ARGUMENT

I.

The Nature of the Tax.

As we have stated above, the main question in this case, is whether or not a manufacturer located at St. Louis is properly assessed an occupation tax on account of sales of goods manufactured in St. Louis, but which at the time of sale had been warehoused in other states awaiting sale, the sales themselves having been negotiated at St. Louis.

The record shows that the sales in question were of goods which had been manufactured at the factory in St. Louis. As all of the warehouses in St. Louis were full, these goods were shipped to other states before any sale was actually negotiated. They were then warehoused in other states and when orders were received at St. Louis the sale was consummated and the goods were ordered shipped from the warehouse to the purchaser.

The plaintiff contends that such sales are governed by the ruling in the third paragraph of the opinion in the case of American Manufacturing Co. v. St. Louis, 238 Mo. 267, *l. c.* 278. There is a marked distinction, however, between the sales there considered and the sales in controversy here, for the sales which were under consideration in that case were of goods manufactured in a factory in the State of New York and shipped from that factory to purchasers in Texas. The goods had never been in Missouri and they were not the product of Missouri manufacture.

It is always to be borne in mind that the present tax is a tax upon manufacturers. It is an occupation or license tax upon the privilege of doing business. It is not a tax upon property and is not a tax upon the sales as such. The amount of sales is merely used in order to determine the amount of the license tax. A company doing a manufacturing business in Missouri is required to pay a license tax for the privilege of doing business. That license tax should be commensurate with the amount of business done; in other words, with the amount of goods manufactured, and all goods which are the product of a factory in Missouri should be considered in arriving at the amount of the license tax.

The tax in question is not a merchant's license, but a manufacturer's license. It is levied under the terms of Section 2185, of the Revised Code of 1907, which provides:

> "Every person defined to be a manufacturer by the preceding section shall, before doing or offering to do business as such, procure from the license collector a license therefor, under the provisions of this article, for which there shall be paid the same rate as merchants are required to pay for a license."

Section 2198 fixes the amount of tax upon merchants. It is thus seen that the license is the same as that levied upon merchants. It nevertheless is a license, not for the privilege of carrying on a mercantile business, not upon the privilege of selling goods, but upon the privilege of manufacturing them. In the light of these considerations, we believe that the distinction between the facts of this case and the state of facts

considered under paragraph III, at page 278, of the former case in 238 Mo. is vital. In that case the sales were of goods which were the product of the New York factory and, clearly, the St. Louis factory should not be taxed as a manufacturer merely because the sales were negotiated through the St. Louis office.

But it is argued that as the goods were at the time of sale actually in a different state, therefore the ordinance of St. Louis should not be construed as covering such sales. This argument, we believe, is the result of a confusion between a merchant's and a manufacturer's license.

The question whether or not a merchant doing business in St. Louis should be required to pay an occupation tax on account of sales negotiated by him which are to be shipped from New York to Texas would be a question presenting considerable difficulty, were it not for the decision of this Court in the 238th Mo. But the present case presents no such difficulties. Here the city is simply attempting to collect a tax upon a manufacturer who has a factory in St. Louis, on account of goods manufactured at that factory. Under the terms of the ordinance the license tax is not collectible until the end of the year and is then graduated in accordance with the amount of sales made. During that year the product of the factory may have been shipped all over the country. The factory, however, has become liable for the payment of a license by the very manufacture of the goods. It cannot be too strongly insisted that the tax is not upon the goods themselves, and is not upon the sales as such, but is a privilege or occupation tax graduated in accordance with the amount of sales. The fact, therefore, that

the goods manufactured have been shipped out of the State before any sale is negotiated, is not material. The effort is not to tax the goods in a foreign State, nor is it an effort to tax interstate commerce. It is not a tax upon the business of selling goods in interstate commerce. Where a manufacturer ships goods to another state and there has them warehoused pending a sale, and subsequently sells them, the transaction should be considered as a whole, and this method of storage should not furnish an avenue of escape from the payment of a license tax levied upon all manufacturers alike, in accordance with the extent of their business.

This case, it seems to us, is entirely free from any difficulties on account of a supposed taxation of interstate commerce, but as the plaintiff argues that the tax is an unconstitutional levy upon interstate commerce, we shall examine the subject at some length in order to show, first, that the tax is not a tax upon property or upon sales, but is an occupation tax; and, second, that it is not an unconstitutional interference by a State with interstate commerce.

That the tax in question is an occupation tax would seem to be obvious upon its face. It is clearly distinguishable from the ad valorem tax collected from merchants and manufacturers. It is a tax of a character well known to the law and frequently considered by this and other courts. See, for example:

American Union Express Co. v. St. Joseph, 66 Mo. 675, *l. c.* 681;
Clark v. Titusville, 184 U. S. 329, *l. c.* 333-4;
Society for Savings v. Coite, 73 U. S. 594, *l. c.* 608-9;

Maine v. Grand Trunk Ry. Co., 140 U. S. 217, *l. c.* 227-8;
Home Insurance Co. v. New York, 134 U. S. 594, *l. c.* 600;
Aurora v. McGannon, 138 Mo. 33, *l. c.* 48;
St. Louis v. United Railways Co., 210 U. S. 255, *l. c.* 279;
St. Louis v. United Railways Co., 263 Mo. 387, *l. c.* 441;
State ex rel. American Mfg. Co. v. Alt, 224 Mo. 493;
Jarman v. School District, 264 Mo. 646, *l. c.* 654.

That the tax is an occupation tax will also appear from the cases cited under the next heading of this argument.

II.

Interstate Commerce.

Unless restrained by the Federal Constitution each State has the power to tax all property within its borders, and all occupations and all businesses carried on within its borders, and all privileges and franchises derived from the State, and all the income derived from such property, occupations, business or privileges.

Carstairs v. Cochren, 133 U. S. 10, 16;
Coe v. Errol, 116 U. S. 517, 524.

The State may tax not only the property which is used in connection with interstate commerce, but it may tax property used for the purpose of transacting interstate commerce.

Pullman Car Co. v. Pennsylvania, 141 U. S. 18.

Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196-206-211;
Western Union Tel. Co. v. Atty. Gen'l Mass., 125 U. S. 530-549.

Whatever is merely preliminary to interstate commerce and occurring wholly within a single State is not interstate commerce within the meaning of the constitutional provision, however intimately connected it may be with such commerce.

Railroad v. Knight, 192 U. S. 21;
Coe v. Errol, 116 U. S. 517-525;
Diamond Match Co. v. Ontonagon, 188 U. S. 82, and citations.

Although property, the subject of sale, has just been, or is just about to become the subject of interstate commerce, such facts do not render the sale thereof interstate commerce.

Hopkins v. United States, 171 U. S. 578.

The City of St. Louis is authorized by its charter and by the statutes of Missouri to license, tax and regulate the occupation of manufacturers engaged in business within that city.

Charter of St. Louis, Art. III, Sec. 26, Clause 5;
Revised Statutes Mo. (1909), Sec. 9857.

And the statute referred to authorizes the City of St. Louis "to graduate the amount of annual license tax imposed upon * * * manufacturer in proportion to the sales made by such * * * manufacturer during the year next preceding any fixed date."

The effect of the ordinance provisions read together is to require every manufacturer doing business in St.

Louis to procure a license authorizing him to engage in that occupation, and the amount of his occupation license tax so required is fixed at an amount equivalent to a dollar on each one thousand dollars of sales made by such manufacturer. In addition to the occupation license tax thus required there is levied by the city an annual ad valorem personal property tax at the rate of one-fifth of one per centum on the value of the raw materials, merchandise and finished products, tools and machinery held by the manufacturer at certain prescribed times.

Now, it is well settled that it is competent for the State (and the city) to collect an ad valorem tax upon property used in a calling, and at the same time to impose a license tax on the pursuit of that calling.

St. Louis v. Ernst, 95 Mo., *l. c.* 367;
St. Louis v. Green, 70 Mo. 562;
American Union Express Co. v. St. Joseph, 66 Mo. 675;
Aurora v. McGannon, 138 Mo., *l. c.* 45.

Accordingly, in pursuance of ordinance above set out (Sec. 2187), the city imposed a tax upon the value of the raw materials, merchandise, finished products, tools, machinery and appliances of the plaintiff. This is an ad valorem personal property tax.

State ex rel. Tracy, 94 Mo. 217;
Aurora v. McGannon, 138 Mo., *l. c.* 45-46;
Brookfield v. Tooey, 141 Mo. 619, 625.

But, as was said in State ex rel. Tracy, *supra*, "this is another and a different thing" from the license tax imposed on the occupation of manufacturer.

This ad valorem personal property tax is exacted "in addition to the license" (R. C. St. Louis, Sec. 2187, *supra*).

That the tax which is based on the sales of the manufacturer is an occupation license tax, is too clear for doubt. The statute by which (in addition to the city's ample powers under its charter) it is specifically authorized (R. S. Mo. 1909, Sec. 9857) is as follows:

> "All such cities, for city and local purposes, are hereby authorized to license, tax and regulate the occupation of merchants and manufacturers, and may graduate the amount of annual license imposed upon a merchant or manufacturer in proportion to the sales made by such merchant or manufacturer during the year next preceding any fixed date."

The particular ordinance, in obedience to which the plaintiff paid the sums here in suit, is (in part) as follows (R. C. St. Louis, 1907, Sec. 2185):

> "Every person defined to be a manufacturer by the preceding section shall, before doing or offering to do business as such, procure from the license collector a license therefor."

It was the threat of penalties prescribed in this last mentioned ordinance, for doing business as a manufacturer without a license, that constitutes the supposed duress pleaded by the plaintiff, and it was in order to procure the right to manufacture and sell that the plaintiff paid the amounts involved here. Hence, there can be no doubt that the purpose and effect of the ordinance (as of the statute) is to impose an occupation license tax on the manufacturer.

Furthermore, we submit that the form of this occupation license tax on manufacturers, based on the amount of sales, does not change its nature or affect the validity of license taxes exacted under it. State and city being invested with the power to require an occupation license tax from manufacturers, can lawfully prescribe any reasonable method of fixing the amount of such license tax, and so long as it does not thereby directly interfere with interstate commerce it is not in conflict with the interstate commerce clause of the federal constitution.

The license tax in question could have been levied at a lump sum, but the laws of the State and the city adopted the more just and equitable method of regulating it according to the amount of business.

An occupation license tax fixed at a lump sum would necessarily fall ultimately on the products of the plaintiff's manufacture, and thereby increase the price of those products, and thereby remotely affect interstate commerce when those products became the subject thereof. Likewise, the taxation of the realty of the manufacturer in St. Louis must measurably increase the price of its products which get into the channels of interstate commerce, and thereby in some measure affect interstate commerce. In short, any exaction by the State from one engaged in transactions across state lines, must in some measure affect interstate commerce, but no one ever contended that such exactions were in nature such interference with interstate commerce as to contravene the constitutional provision.

The object of that provision was not to limit the taxing power of the State over its citizens, but to pre-

vent the State from directly restricting interstate commerce.

In the case of Galveston H. & C. Y. Ry. Co. v. Texas, 210 U. S. 225, Mr. Justice Holmes said:

> "It being once admitted, as of course it must be, that not every law that affects commerce among the States, is a regulation of it in a constitutional sense, nice distinctions are to be expected. Regulation and commerce among the States both are practical, rather than technical conceptions, and naturally their limits must be fixed by practical lines. * * * By whatever name the exaction may be called, if it amounts to no more than the ordinary tax upon property, or a just equivalent therefor, ascertained by reference thereto, it is not open to attack as inconsistent with the constitution."

The occupation license granted by the City of St. Louis to manufacturers authorizes them to perform the functions therein named of manufacturing and selling in said city. The sale of the product there manufactured under such license cannot be limited to the State of Missouri. The State and city, in imposing the license tax, must either limit the tax solely to those manufacturing goods for distribution exclusively in Missouri, or must fix it regardless of the distribution of the manufactured product within and beyond the boundaries of Missouri. The former method would not only be impracticable, but would be violative of the uniformity clause of the Missouri constitution (Art. X, Sec. 3). Under that system the manufacturer in St. Louis of products for which there is no demand in Missouri, might escape wholly from taxation, regardless of the volume of his business.

Adopting the latter system of requiring an occupation license tax for all manufacturers in St. Louis, the city exercises its taxing power on the occupation of manufacture which is conducted within its limits and under its protection, and not on the function of distribution which follows. Both the occupation, which is taxed, i. e., **manufacture**, and the standard by which the value of that occupation is measured for purposes of the license tax, i. e., sales, are conducted and "completed" in St. Louis. The fact that the sales of the present plaintiff in a certain year resulted in distribution of its goods through the channels of interstate commerce is but an adventitious circumstance, which might have been different then and afterwards, as its business was not confined to transactions with non-residents. The occupation license tax is not based or dependent on the delivery of goods; it would equally apply if there were no delivery made pursuant to sale, or if there were a sale now for future delivery after June 1st, or if there were sales "f. o. b. St. Louis" to a customer in another State. It is not based on the **goods** sold; it would equally be required if no goods were sold for actual delivery. It is not dependent on the **price** paid or the **profit** gained or on the **collection** made; it is required regardless of the price or whether there be a profit or even a collection. It is not dependent on the **location** of the goods; for the license tax is levied on the **occupation** and that is conducted in St. Louis, and is measured by the **sales**, and those are "completed" in St. Louis.

All laws, if there is any doubt in their meaning, are so construed as to avoid declaring them illegal, if their language is susceptible of so construing them as to render them valid. These laws, then, were evidently

revenue measures, intended to tax what the State and the city had a right to tax in the City of St. Louis. It therefore attempted no tax on the transportation of goods from New York City to Illinois, let us say, or the delivery of goods from one State to another, or the business of delivering goods in another State, but taxed the business of conducting a manufacturing business in St. Louis, basing the tax on the sales of goods manufactured in St. Louis, without respect to the goods, or where the goods were, or where the various customers of the manufacturer happened to be, whether in St. Louis or out of it.

We submit that the fact that the amount of the occupation license tax as determined by reference to the amount of sales, does not constitute an interference with interstate commerce, even though the goods sold become the subject thereof.

This mode of determining the amount of license tax has not only been sustained, but commended by this Court and by the Supreme Court of the United States.

In the case of American Union Express Co. v. St. Joseph, 66 Mo. 675, 681-2, the City of St. Joseph, under its power to license, tax and regulate express companies, imposed a tax upon the gross annual receipts of the plaintiff express company from its business done in that city. That business consisted in part of receiving goods to be delivered to points outside of the State, and in resisting the tax the express company invoked the interstate commerce clause of the federal constitution. This Court held that such a tax was not a regulation of interstate commerce, and declared that in exercising its taxing powers "the city might adopt any method of taxing which the Legislature might

have adopted, and as it has been expressly decided that the Legislature might impose a tax upon incomes, it follows that the defendant, through its council, might, as it in fact did, impose a tax upon the income of defendant, the gross receipts being in effect the gross income."

In the case of Clark v. Titusville, 184 U. S. 329, 333-4, the city had imposed a license tax on certain occupations regulated by the amount of sales, and the Court approved it, saying:

> "Plaintiff in error, however, contends that the tax in the case at bar is a tax on property, not on the privilege to do business, because the final incidence of the tax is on the merchant and is paid by him. But every tax has its final incidence on some individual. That effect, therefore, cannot be urged to destroy well-recognized distinctions. The tax in the case at bar is a tax on the privilege of doing business, regulated by the amount of sales, and is not repugnant to the constitution of the United States."

Again, in the case of Society for Savings v. Coite, 73 U. S. 594, 608-9, a statute required saving societies to pay annually a sum equal to three-fourths of 1 per cent on the total amount of their deposits on a given day. This statute was sustained as a franchise tax and not a tax on property, the Court saying:

> "Amount of the tax required to be paid by the defendant corporation is a sum equal to three-fourths of 1 per cent on the total amount of deposits in the institution on the first day of July in each year. Reference is evidently made to the total amount of deposits on the day named, not as the subject-matter for assessment, but as the basis for computing the tax required to be paid by the

corporation defendants. They enjoy important privileges, and it is just that they should contribute to the public burdens.

"Views of the defendants are that the sums required to be paid to the treasury of the State is a tax on the assets of the institution, but there is not a word in the provision which gives any satisfactory support to that proposition. Different modes of taxation are adopted in different States, and even in the same States at different periods of their history. Fixed sums are in some instances required to be annually paid into the treasury of the State, and in others a prescribed percentage is levied on the stock, assets, or property owned or held by the corporation, while in others the sum required to be paid is left indefinite, to be ascertained in some mode by the amount of business which the corporation shall transact within a definite period.

"Experience shows that the latter mode is better calculated to effect justice among the corporations required to contribute to the public burdens than any other which has been devised, as its tendency is to graduate the required contribution to the value of the privileges granted, and to the extent of their exercise. Existence of the power is beyond doubt, and it rests in the discretion of the Legislature whether they will levy a fixed sum, or, if not, to determine in what manner the amount shall be ascertained.

"Irregularity of taxation is a fruitful source of complaint and it is but right to say that the mode prescribed in this provision of computing the sum to be paid is well calculated to distribute the burdens in equal and just proportions. Arbitrary sums are almost necessarily unequal, as the Legislature cannot forsee the varying circumstances of the future which may surround the business of a

corporation, and which may abridge or augment its receipts and increase or diminish its profits."

In the case of Maine v. Grand Trunk Ry. Co., 142 U. S. 217, 228-9, a State statute was upheld which required railroads to pay an annual tax for the privilege of exercising their franchise therein, to be determined by the amounts of its gross transportation receipts, the Court saying:

"The Court below held that the imposition of the taxes was a regulation of commerce, interstate and foreign, and therefore in conflict with the exclusive power of Congress in that respect; and on that ground alone it ordered judgment for the defendant. This ruling was founded upon the assumption that a reference by the statute to the transportation receipts and to a certain percentage of the same in determining the amount of the excise tax, was in effect the imposition of the tax upon such receipts, and therefore an interference with interstate and foreign commerce. But a resort to those receipts was simply to ascertain the value of the business done by the corporation, and thus obtain a guide to a reasonable conclusion as to the amount of the excise tax which should be levied; and we are unable to perceive in that resort any interference with transportation, domestic or foreign, over the road of the railroad company, or any regulation of commerce which consists in such transportation. If the amount ascertained were specifically imposed as the tax, no objection to its validity would be pretended. And if the inquiry of the State as to the value of the privilege were limited to receipts of certain past years instead of the year in which the tax is collected, it is conceded that the validity of the tax would not be affected; and if not, we do not see how a reference to the results of any other year could affect its

> character. There is no levy by the statute on receipts themselves, either in form or in fact; they constitute, as said above, simply the means of ascertaining the value of the privilege conferred."

Likewise, in the case of Home Insurance Co. v. New York State, 134 U. S. 594, 600, a tax was upheld which was imposed by a statute on the corporate franchise of all corporations doing business within the State, and measured by the extent of the dividends of the corporation in the current year, and it was held that the statute did not affect a tax on bonds of the United States from which a portion of the dividends was derived. The Court said:

> The State "may require * * * that the corporation pay a specific sum to the State each year or month, or a specific portion of its gross receipts, or of the profits of its business, or a sum to be ascertained in any convenient mode which it may prescribe. The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows."

Finally, in the case of St. Louis v. United Railways Co., 210 U. S. 255, 279, a St. Louis license tax on street railway companies, determined by reference to the number of passengers carried on each car, was upheld, the Court saying:

> "It is said in the opinion of the learned judge below that a tax equal to one mill for each paid passenger amounts to a tax of 2 per cent on the gross receipts, and is, therefore, an increase on

> what the company had theretofore agreed to pay, but the tax is not levied on the gross receipts as such, and any license tax, in whatever sum imposed, would take something from the gross receipts of the company."

So, we assert, that in the case at bar the occupation license tax, measured by reference to the amount of sales made during the preceding year, is not levied on the amount of such sales, much less on the goods sold, and therefore cannot and does not constitute any interference with interstate commerce, even though such goods happen to get into the channels thereof.

In Ficklen v. Shelby County, 145 U. S. 1, the Court says:

> "No doubt can be entertained of the right of a State Legislature to tax trades, professions and occupations in the absence of inhibition in the State constitution in that regard; and where a resident citizen engages in general business, subject to a particular tax, the fact that the business done chances to consist, wholly or partially, in negotiating sales between resident and non-resident merchants of goods situated in another State, does not necessarily involve the taxation of interstate commerce, forbidden by the constitution * * * Here the tax was not laid on the occupation or business of carrying on interstate commerce, or exacted as a condition of doing any particular commission business; and complainants voluntarily subjected themselves thereto in order to do a general business."

The Court refers to a number of authorities, illustrating the principle which underlines the decision, and the opinion then proceeds (p. 24):

> "Since a railroad company engaged in interstate commerce is liable to pay an excise tax according

> to the value of the business done in the State, ascertained as above stated, it is difficult to see why a citizen doing a general business at the place of his domicile should escape payment of his share of the burden of municipal government because the amount of his tax is arrived at by reference to his profits. This tax is not on the goods, or on the proceeds of the goods, nor is it a tax on non-resident merchants, and if it can be said to affect interstate commerce in any way, it is incidentally and so remotely as not to amount to a regulation of such commerce."

The gist of the decision in the Ficklen case was that as the State has the right to tax occupations, where a resident citizen engages generally in a taxable business, the fact that the business done consisted partly in sales between resident and non-resident merchants did not necessarily make the tax one upon interstate commerce; and that an occupation tax measured by reference to the gross yearly commissions of its resident citizen so engaged is not a tax on the goods or on the proceeds of the goods, nor a tax on non-resident merchants with whom he transacted part of his business, and if it can be said to affect interstate commerce in any way it is incidentally and so remotely as not to amount to a regulation of such commerce.

While the Ficklen case differs in fact from the present case, we submit that the principles involved are similar, and that it is decisive of the case at bar. Here, the plaintiff has been licensed to engage in the manufacturing business conducted in the City of St. Louis. It is thereby authorized to do, and does, a general manufacturing business, without necessary regard to the location of the markets for its product. The fact that the distribution of its product chances to consist

partly in sales to non-residents and that the amount of the tax exacted from it is measured by the aggregate of its sales, does not necessarily interfere with interstate commerce, forbidden by the constitution. As was said in the Ficklen case, the occupation license tax on the plaintiff here "is not on the goods, or on the proceeds of the goods, nor is it a tax on non-resident merchants, and if it can be said to affect interstate commerce in any way, it is incidentally and so remotely as not to amount to a regulation of such commerce."

While there are numerous other cases which have some bearing on the question here involved, we shall conclude by referring briefly to three of them which appear to us to be pertinent.

In the case of Hatch v. Reardon, 204 U. S. 152, 158-9, 161-2, the statute of New York imposing a tax of 2 cents a share on transfers of stock made within that State was held, with reference to the stock of non-resident corporations, not to be an interference with interstate commerce, the Court saying:

> "It is urged further that a tax on sales is really a tax on property, and that therefore the act, as applied to the shares of a foreign corporation owned by non-residents, is a taking of property without due process of law. Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 194. This argument presses the expressions in Brown v. Maryland, 12 Wheat. 419, 444; Fairbank v. United States, 181 U. S. 283, and intervening cases, to new applications, and farther than they properly can be made to go. Whether we are to distinguish or to identify taxes on sales and taxes on goods depends on the scope of the constitutional provision concerned. Compare Foppiano v. Speed, 199 U. S. 501, 520. A tax on foreign bills of lad-

ing may be held equivalent to a tax on exports as against Article I, Section 9; a license tax on importers of foreign goods may be held an unauthorized interference with commerce; and yet it would be consistent to sustain a tax on sales within the State as against the Fourteenth Amendment so far as that alone is concerned. Whatever the right of parties engaged in commerce among the States, **a sale depends in part on the law of the State where it takes place for its validity and, in the courts of that State, at least, for the mode of proof.** No one would contest the power to enact a statute of frauds for such transactions. **Therefore the State may make parties pay for the help of its laws, as against this objection.** A statute requiring a memorandum in writing is quite as clearly a regulation of the business as a tax."

* * *

"It is said that the property sold was not within the State. The immediate object of sale was the certificate of stock present in New York. That document was more than evidence, it was a constituent of title. No doubt, in a more remote sense, the object was the membership or share which the certificate conferred or made attainable. More remotely still it was an interest in the property of the corporation, which might be in other States than either the corporation or the certificate of stock. But we perceive no relevancy in the analysis. **The facts that the property sold is outside of the State and the seller and buyer foreigners are not enough to make a sale commerce with foreign nations or among the several States,** and that is all that there is here."

In the case of State v. Brodnax & Essex, 228 Mo. 25, 49-53, this Court sustained the Act of March 8, 1907, requiring a corporation or other seller of stocks,

bonds, grain and other commodities sold on the Board of Trade or at an office or store, whether on margins or otherwise, to furnish the purchaser a memorandum on which is a stamp of the value of 25 cents, obtained from the State auditor, and held that the act did not provide for a direct or property tax, but an excise or stamp tax on the right to permit the occupation of buying or selling such things, and that sales of property on boards of trade or exchanges do not have anything to do with the transportation of property from one State to another, and that the mere fact that the parties to the sale, or either of them, is a resident of another State in no way legally or practically makes the sale interstate commerce, and that the sale in no sense depends upon the physical presence in the State of the property sold or of the purchaser, and the tax is imposed only on the sale here, and hence no question of interstate commerce is involved. The Court said:

> "This brings us to the consideration of the insistence on the part of the appellants that the statute now under consideration is illegal and invalid, for the reason that it interferes with interstate commerce, and is therefore violative of the provisions of Section 1, Article 8, of the constitution of the United States.
>
> "It is sufficient to say upon this proposition, after a most careful consideration of the subject, that in our opinion the license or stamp tax required by the statute involved in this proceeding upon sales made at the places and in the manner provided by the statute does not, even in the remotest degree, interfere with interstate commerce.
>
> • • •
>
> "It must not be overlooked that the license or stamp tax required by the statute involved in this

proceeding is not a tax upon property, but is a requirement to place a 25-cent stamp upon the sale of property made in the manner and at the places provided for by such statute. In other words, it is a license or stamp tax upon a particular kind of contract when made in this State. This proposition confronted the New York Court of Appeals in the Hatch case, *supra*, and in treating of the subject of a stamp tax upon sales of certificates of stock, that Court thus stated the law: 'The certificate, itself, is not liable for the tax, but the person selling it is. The tax is not a lien on certificates, nor on shares, which may be owned to any extent throughout the State, free from any claim under the statute in question. It is the sale alone that gives rise to the tax, which is imposed through the command of the law to the seller to pay the tax when the contract to sell is made, and it is enforced not by levy and sale, but by civil and penal remedies against the person of the seller. While this tax, the same as all other taxes, must ultimately come out of the property of the seller, it cannot be enforced against the certificate sold as distinguished from his other property.'

"In further discussing that question it was said that 'jurisdiction over the persons who made the contract does not depend on their residence, but on their presence within the State when the contract is made. Jurisdiction over property depends on its physical presence here, or if it is personal property, either its presence here or the residence of the owner here. * * * When two citizens of Connecticut come into this State and make a contract here, to be enforced here, both they and their contract are subject to its laws, and they are not only entitled to the protection thereof, but are under the same obligation to obey as if they were citizens. Such a contract is valid or invalid as our laws declare. When the law commands that

if they, or any other persons, whether residents or not, make a certain contract here they must pay a certain tax for the privilege, the command is personal, addressed to them as persons then within the State, and is as binding on them as if they resided in the State. Their rights and the obligations in reference to such a contract are the same as if they were citizens, no greater and no less. The fact that the contract, though made here, may relate to property, real or personal, situated elsewhere, has no bearing upon the question. By coming into the State they subjected themselves to its laws and to its taxing power, so far as the making of such a contract is concerned. It is immaterial whether the contract is between residents or non-residents, or between a resident and a non-resident, for if it is made within the State it is subject to taxation by the State.'

"Manifestly the State has power within its territory to regulate all business done, and, as was said in Matter of McPherson, 104 N. Y. 306:

" 'It has never been questioned that the Legislature can impose a tax upon all sales of property, upon all incomes, upon all acquisitions of property, upon all business, and upon all transfers.'

"The requirements of the statute now under consideration have no bearing or influence whatever upon property sold. It is addressed to those furnishing the places, as well as those who deal in the transaction in such places. In other words, in sales of property in the manner and at the places pointed out by the statute it is required, where a sale is made in the manner contemplated by that statute, that the seller shall make a memorandum of such sale, and place upon such memorandum a 25-cent stamp. We repeat that transactions of this character have no influence whatever upon commerce between different states, and, as was in substance said by the Supreme Court of the United

States, sales of this character do not contemplate or have anything to do with the transportation of property from one State to another, as in the drummer cases, and the mere fact that the parties to such sale, or either one of them, happens to be a resident of another State, in no way legally or practically affects the transaction and falls far short of subjecting such transaction to condemnation for the reason that it interferes with interstate commerce. Our conclusion upon this proposition is that this statute in no way interferes with interstate commerce and should not be held invalid for that reason."

The case last mentioned being taken to the Supreme Court of the United States, was there decided on January 9, 1911, and the judgment of this Court sustained.

Brodnax v. Missouri, 219 U. S. 285.

The Court said (p. 294):

"Again, it is said that the statute, by its necessary operation, is a regulation of interstate commerce. Not so. It might suffice, in the present case, to say, that under the facts admitted there is no reason whatever to invoke the commerce clause of the federal constitution. All that the defendant offered to show in this connection was that a substantial part of the sales referred to were of grain, provisions and other commodities which were at the time of sale in course of transportation as articles of interstate commerce."

The Court, after quoting the opinion of this Court, proceeds:

"We add that the indictment deals with the **place** where sales, such as the statute describes, are made. The offense is complete under the statute, by the keeping of such a place, and that oc-

curs before any question of interstate commerce could arise, so far as this record discloses."

The case of Crew Levick Co. v. Pennsylvania, 245 U. S. 292, is not applicable to the facts of this case at bar, because the tax in that case was a tax upon the business of selling goods in foreign commerce, whereas in the case at bar the tax is on the business of manufacturing goods in St. Louis, and the fact that some of the sales are of goods "warehoused" outside of Missouri is merely incidental and accidental.

In view of the foregoing authorities we submit, in conclusion, that the tax here involved is an occupation license tax exacted from the plaintiff in consideration of its engaging in manufacture in the City of St. Louis; that the tax is laid on the occupation as such and as pursued in the City of St. Louis, and not on the sales made in connection therewith; that the determination of the amount of the occupation tax, by reference to the amount of sales made by the manufacturer in the preceding year in the City of St. Louis, does not constitute a tax upon the goods involved in those sales, and that it is immaterial whether the sales are made between residents and non-residents, or whether they relate to goods situated within the State of Missouri at the time of sale or not, but that the fact that the occupation is pursued and all goods manufactured in the City of St. Louis subjects that occupation to the payment of a license tax, and that the amount of such tax may be lawfully measured by the amount in the aggregate of those sales, regardless whether the property sold be, at the time of sale, located in this State and shipped to another, or located in another State and shipped to yet another than Missouri.

We respectfully submit that the judgment of the Supreme Court of Missouri en banc should be affirmed.

Respectfully submitted,

CHARLES H. DAUES,
EVERETT PAUL GRIFFIN,
Attorneys for Defendant in Error.

AMERICAN MANUFACTURING COMPANY *v.* CITY OF ST. LOUIS.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

No. 365. Argued April 30, 1919.—Decided June 9, 1919.

The question whether a state law or tax deprives a party of constitutional rights depends upon its practical operation and effect. P. 462.

An ordinance conditioning the right to manufacture goods within a city upon the payment of a license tax computed upon the amount of the sales of the goods so manufactured, *held*, a tax upon the business of manufacture within the city, and not a tax upon the sales. P. 463.

Such a tax when computed upon the sales of goods manufactured in the city under the license, but removed, and afterwards sold, beyond the State, does not impose a direct burden on interstate commerce or, when the manufacturer is a sister-state corporation, deprive it of property without due process. P. 464.

198 S. W. Rep. 1183, affirmed.

THE case is stated in the opinion.

Mr. S. Mayner Wallace, with whom *Mr. Shepard Barclay* was on the brief, for plaintiff in error.

Mr. Everett Paul Griffin, with whom *Mr. Charles H. Daues* was on the brief, for defendant in error.

MR. JUSTICE PITNEY delivered the opinion of the court.

The question is whether an ordinance of the City of St. Louis levying against manufacturers, especially as against plaintiff in error, a West Virginia corporation, a tax imposed as a condition of the grant of a license to carry on a manufacturing business in that city, but the amount of which is ascertained by and proportioned to the amount of sales of the manufactured goods, whether sold within or without the State, and whether in domestic or interstate commerce, is void as amounting to a regulation of commerce among the States and thus entrenching upon the power of the national Congress under Art. I, § 8, of the Constitution, or as amounting to a taking of plaintiff's property without due process of law, in contravention of the Fourteenth Amendment.

A statute of the State (Rev. Stats. Mo. 1909, § 9857) authorizes cities to license, tax and regulate for local purposes the occupations of merchants and manufacturers and to graduate the amount of annual license imposed upon them in proportion to the sales made by such merchant or manufacturer during the year next preceding any fixed date. Pursuant to this authority the city, by the ordinance in question, in addition to an *ad valorem* property tax, requires every manufacturer in the city before doing or offering to do business as such to take out a license, and at a specified time to render a sworn statement of the aggregate amount of sales made by him during

the year next preceding the first Monday of June, and within a short time thereafter to pay a license tax of $1 on each $1,000 of sales made. Failure or refusal to deliver the required statement or to pay the license tax within the time specified is made a misdemeanor punishable by fine and the imposition of a double tax; making a false statement under oath is made punishable by forfeiture of the license in addition to a fine.

In a previous case (*Manufacturing Co.* v. *St. Louis*, 238 Missouri, 267, 278), the Supreme Court of the State held that this tax did not apply to sales made of goods shipped from plaintiff's factory in the State of New York directly to purchasers in Texas, but only to sales from its St. Louis factory.

In the present case, which was a suit brought in a state court by plaintiff in error against the city to recover so much of a disputed tax as was measured by sales of goods manufactured by plaintiff in the city, afterwards removed to storage warehouses outside of the State, and later sold from these warehouses to purchasers in States other than Missouri, the trial court at first gave judgment in favor of plaintiff on this item, and this having been reversed by the Supreme Court of the State (270 Missouri, 40), a new trial resulting in favor of the city, and the second judgment having been affirmed (198 S. W. Rep. 1183), the case comes here on writ of error.

In construing the statute and ordinance and defining the nature and effect of the tax, the Supreme Court expressed itself as follows (p. 45):

"It is not disputed that under the broad provision of its charter the city of St. Louis has the power to license and tax manufacturers within its limits; nor that the power includes the right to impose a tax upon the transaction of their business. Adopting substantially the definition we have quoted from the statute, it has, by ordinance, forbidden them to pursue their business within the city

without procuring a license, and has prescribed the additional tax they shall pay for that purpose, which is graduated to accord with the amount of business they shall carry to the point of realizing the profit or liquidating the loss by the sale of the product of their work. They may only buy and sell in pursuance of their business as manufacturers. That his right to pursue this business is the one thing he receives as compensation for this tax is evident; and that the method of fixing its amount by the amount that he realizes from the licensed activity is a just and equitable one is not disputed; nor is the inherent justice and fairness of postponing the payment until the realization of the result of the work. The tax is none the less a tax upon the business of manufacture pursued in the city of St. Louis under the protection of the laws of this State and the ordinances of the city. . . . We hold that the tax in question is a tax upon the privilege of pursuing the business of manufacturing these goods in the city of St. Louis; that when the goods were manufactured the obligation accrued to pay the amount of the tax represented by their production when it should be liquidated by their sale by the manufacturer; that their removal from the city of St. Louis and storage elsewhere, whether within or without the State, worked no change in this obligation; that their sale by the respondent wherever they may have been stored at the time, whether it was done through its home office in New York or the office of its factory in St. Louis, should have been reported in its return to the license collector of the city of St. Louis and the amount included in fixing the amount payable on account of its license tax."

As a matter of construction, this, upon familiar principles, is conclusive upon us. But, as has been held very often, the question whether a state law or a tax imposed thereunder deprives a party of rights secured by the federal Constitution depends not upon the form of the act, nor

upon how it is construed or characterized by the state court, but upon its practical operation and effect. *St. Louis Southwestern Ry. Co.* v. *Arkansas*, 235 U. S. 350, 362; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 237; *Crew Levick Co.* v. *Pennsylvania*, 245 U. S. 292, 294.

The admitted facts show that the operation and effect of the taxing scheme now under consideration are correctly described in what we have quoted from the opinion of the state court. No tax has been or is to be imposed upon any sales of goods by plaintiff in error except goods manufactured by it in St. Louis under a license conditioned for the payment of a tax upon the amount of the sales when the goods should come to be sold. The tax is computed according to the amount of the sales of such manufactured goods, irrespective of whether they be sold within or without the State, in one kind of commerce or another; and payment of the tax is not made a condition of selling goods in interstate or in other commerce, but only of continuing the manufacture of goods in the City of St. Louis.

There is no doubt of the power of the State, or of the city acting under its authority, to impose a license tax in the nature of an excise upon the conduct of a manufacturing business in the city. Unless some particular interference with federal right be shown, the States are free to lay privilege and occupation taxes. *Clark* v. *Titusville*, 184 U. S. 329; *St. Louis* v. *United Railways Co.*, 210 U. S. 266, 276.

The city might have measured such tax by a percentage upon the value of all goods manufactured, whether they ever should come to be sold or not, and have required payment as soon as, or even before, the goods left the factory. In order to mitigate the burden, and also, perhaps, to bring merchants and manufacturers upon an equal footing in this regard, it has postponed ascertainment and payment of the tax until the manufacturer can bring

the goods into market. A somewhat similar method of postponing payment has been pursued for many years by the Federal Government with respect to the internal revenue tax upon distilled spirits. Rev. Stats., §§ 3251, 3253; Act of August 27, 1894, c. 349, § 48, 28 Stat. 509, 563.

To the suggestion that the tax burdens the mercantile rather than the manufacturing business, because it would be possible for one to manufacture goods to an unlimited extent and pay no tax unless they were sold, or to sell goods and be required to pay the tax although they were not manufactured by the seller, it is sufficient to say—answering the second point first—(a) that, according to the state law as laid down by the court of last resort in this case, a manufacturer has no right to sell goods except those of his own manufacture; and (b) it is not to be supposed that, for the purpose of evading a tax payable only upon the sale of his goods, a manufacturer would pursue the ruinous policy of making goods and locking them up permanently in warehouses. In the outcome the tax is the same in amount as if it were measured by the sale value of the goods but imposed upon the completion of their manufacture. The difference is that, for reasons of practical benefit to the taxpayer, the city has postponed payment until convenient means have been furnished through the marketing of the goods.

In our opinion, the operation and effect of the taxing ordinance are to impose a legitimate burden upon the business of carrying on the manufacture of goods in the city; it produces no direct burden on commerce in the goods manufactured, whether domestic or interstate, and only the same kind of incidental and indirect effect as that which results from the payment of property taxes or any other and general contribution to the cost of government. Therefore, it does not amount to a regulation of interstate commerce. And, for like reasons, it has not the effect of imposing a tax upon the property or the busi-

ness transactions of plaintiff in error outside of the State of Missouri, and hence does not deprive plaintiff in error of its property without due process of law.

Our recent decisions cited in opposition to this view, *Crew Levick Co.* v. *Pennsylvania*, 245 U. S. 292, 297; *Looney* v. *Crane Co.*, 245 U. S. 178, 188, and other cases of the same kinds referred to therein, are so obviously distinguishable that particular analysis is unnecessary.

Judgment affirmed.